

DEC 11 1996

No. 96-454

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

ASSOCIATION COMMERCIAL CORPORATION,
Petitioner,

v.

ELRAY RASH AND JEAN RASH,
Respondents.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

BRIEF IN OPPOSITION

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i

Question Presented

The proper method of valuing the security interest of a secured creditor for purposes of determining the secured creditor's allowed secured claim vis a vis other claimants in chapter 13 wage earner payment plans.

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	3
I. THE FACTS IN THIS CASE ARE ILL-SUITED FOR THE POLICY DETERMINATIONS PETITIONER SEES	3
II. THE CIRCUIT SPLIT IS ILLUSORY AND SHALLOW	5
III. THERE ARE FUNDAMENTAL FLAWS IN PETITIONER'S LEGAL REASONING	7
IV. THERE ARE FUNDAMENTAL FLAWS IN THE POLICY ARGUMENTS OF AMICUS	8
CONCLUSION	10

TABLE OF AUTHORITIES

CASES	PAGE
<i>In re Balbus</i> , 932 F.2d 246 (4th Cir. 1991)	5
<i>In re Coker</i> , 973 F.2d 258 (4th Cir. 1992)	5
<i>Lomas Mortgage USA v. Wiese</i> , 980 F.2d 1279 (9th Cir. 1992)	5
<i>Lomas Mortgage USA v. Wiese</i> , US, 113 S.Ct. 2925, 124 L.Ed. 676 (1993)	6
<i>In re McClurkin</i> , 31 F.3rd 401 (6th Cir. 1994)	6
<i>In re Taffi</i> , 96 F.3rd 1190 (9th Cir. 1996)	6, 7
<i>In re Trimble</i> , 50 F.3rd 530 (8th Cir. 1995)	6, 7
<i>United States v. Nordic Village, Inc.</i> , 503 US 30 (1992)	7, 8
<i>In re Winthrop Old Farm Nurseries, Inc.</i> , 50 F.3rd 72 (1st Cir. 1995)	6
STATUTES	
11 U.S.C. §502	1, 2
11 U.S.C. §1325 (a) (5) (B)	1
11 U.S.C. §507 (a) (8)	1
11 U.S.C. §1322 (a) (2)	7
11 U.S.C. 1328 (b)	7

Opinions Below

The opinion of the United States Court of Appeals for the Fifth Circuit *en banc* is reported at 90 F.3rd 1036. It and the opinions preceding it are included in the appendix of the petitioner's petition for writ of certiorari.

Statement of the Case

Mr. Elray Rash owns and operates out of Lufkin, Texas, a Kenworth heavy truck to support himself and his wife Jean. He borrowed from the petitioner, Associates Commercial Corporation, to purchase the truck. Subsequently he and his wife filed a chapter 13 bankruptcy petition, promptly filing a proposed plan and thereafter complying with all requirements of the Bankruptcy Code, the rules and policies of the United States Bankruptcy Court for the Eastern District of Texas, and his proposed plan while awaiting confirmation and thereafter. He has never missed a payment.

In his chapter 13 plan, Mr. Rash proposed to pay about \$28,000 to the Associates, an amount he believed to be equal to the fair market value of the truck. The Associates had filed a proof of claim claiming \$42,500 owed and a security interest in the truck in an equal amount. So Mr. Rash objected to the Associates' proof of claim under 11 U.S.C. §502. The Associates used the same argument to file an objection to Mr. Rash's chapter 13 plan under 11 U.S.C. §1325 (a) (5) (B).

In due course, the bankruptcy court called the §502 hearing. The parties did not disagree that the Associates was owed money, the total amount of principal and interest owed, or the perfection or first priority of the Associates' security interest under the Texas Motor Vehicle Code. Mr. Rash

went forward and offered the testimony of Mr. Steven Thibodeaux. Mr. Thibodeaux was the sales manager of a large truck dealership in Beaumont, Texas. He testified that he conducted a physical inspection of the truck and that based on that inspection and his knowledge of truck values in the Beaumont area, the truck was worth \$31,875. He qualified the value as "wholesale value".

On cross-examination, Mr. Thibodeaux showed his written report. He also stated that the wholesale value was approximately 25% less than retail but refused to agree that retail was in fact what the truck was worth.

The Associates then produced their witness. He had never seen the truck, had no idea of wholesale or retail values, basing his numbers strictly on what he had just heard Mr. Thibodeaux testify to, and had no idea how well the Associates did when they repossessed and attempted then to sell repossessed trucks. He did state that it was company policy to try to resale for "retail" but could not say whether that policy was successful or how much time or money the company had to invest in the collateral to get that value.

The bankruptcy court, sitting as finder of fact, threw out the Associates' expert's testimony entirely. He then weighed the "wholesale" and "retail" numbers Mr. Thibodeaux had mentioned, and went with Mr. Thibodeaux's testimony that the \$31,875 number was the proper value for the truck.

Mr. Rash then incorporated that number in his chapter 13 plan. He has since paid that amount to the Associates and has completed his plan. The Associates appealed both the §502 judgment and the court's subsequent confirmation of Mr. Rash's chapter 13 plan based on the truck value determined in the §502 proceeding. Because Mr. Rash was

not required to devote a full \$42,500 to his truck payments, he was able to commit to and accomplish a distribution to other unsecured creditors. He personally did not profit from the reduction in secured payments to the Associates.

REASONS FOR DENYING THE PETITION

1. **THE FACTS IN THIS CASE ARE ILL-SUITED FOR THE POLICY DETERMINATIONS PETITIONER SEEKS.**

Both petitioner and amicus, Hibernia National Bank, discuss a great debate which appears to be capturing the bankruptcy bar today, though twenty years after the Code was enacted and twenty-three years after Chapter 13 plans first appeared. The debate involves a simple, common set of facts. A wage earner files a chapter 13 petition. Often that wage earner owns a home. We know that the home mortgage, because of the recourse nature of FNMA guarantees of home mortgages and the ultimate burden of the taxpayer in covering home mortgage deficiencies pursuant to that mortgage system, is exempt from impairment in the chapter 13 process. But personal property lenders have no special status and so those who have loaned on the petitioner's automobile are treated identically with all other secured creditors. Their debt is no different than the debt of any other creditor, but they possess a security interest in the collateral. So the Code requires that they be paid on confirmation date property with a present value equal to the value of their collateral. This is generally a stream of payments carrying a stated or implied rate of interest.

But this case fits that pattern poorly. Mr. Rash managed his automobiles under the plan without dispute. The Associates' collateral was not an automobile, not consumer property. It was commercial property. Mr. Rash

was not retaining the truck because he wanted transportation. He retained the truck because it was literally his livelihood. In that sense, the principles of collateral valuation then depart from those we traditionally apply to consumer property. Nowhere in the literature or in the Circuits do we find any extensive debate about how commercial equipment is to be valued.

The misfit continues. On page 5 of its amicus, Hibernia National Bank refers to the N.A.D.A. Official Used Car Guide. Most national commentators assume that when the terms "wholesale" and "retail" are used, it is in reference to that guide. But the commonly used regional report of that guide does not even report a "wholesale" value. In the case at bar, Mr. Thibodeaux used the McLean Hunters Market Report Blue Book, a totally separate and unrelated publication. If you refer to the N.A.D.A. guide published at the time of the adjudication in the case at bar, the regional guide specifically referred appraisers to the national guide wholesale value, disclaiming the retail listings as useful for appraisal purposes at all. And properly, the Fifth Circuit abandoned any legislating of reliance on any published report. Price lists come in and out of publication and change the basis for their calculations.

As a further example of how the case is misfit, the Fifth Circuit held that the security interest of the secured creditor was to be valued, with the probable net proceeds of the creditor on liquidation to be the measure of the value of the collateral. That was exactly the standard argued by the Associates at trial and in all subsequent phases of the appeal. They simply failed to prove by the introduction of any evidence what they were likely to receive when they liquidated the collateral. Remember that it is a total non-sequitur that "wholesale" equals net proceeds to the creditor on collateral disposition--creditors can and do in fact do

much worse--just as it is a total non-sequitur that "retail" equals the replacement value of collateral. "Retail" is a marketing concept not a valuation concept.

And throughout the trial and in all subsequent appeals, Mr. Rash has never attempted to place a value on the Associates' security interest. His expert appraised the truck. Mr. Rash has told each appellate court thereafter that that appraisal was legitimate and that the bankruptcy court's use of that appraisal to find the fact of the truck's valuation was not clearly erroneous. And it is not.

This illustrates a fundamental problem of certiorari worthiness in this arena. These cases are extremely fact intensive and rely heavily on the quality of the records produced by the adversaries. Regardless of how much importance petitioner and amicus place on the debate, this Court will be faced with a petitioner who had the burden of proof on the sole operative fact in the adjudication and who failed to provide any testimony worthy of weight on that fact question. How can this Court treat seriously a complaint that a trial court came up with a bad fair market value number when the petitioner's own appraiser had never even seen the truck?

II. THE CIRCUIT SPLIT IS ILLUSORY AND SHALLOW.

The cases petitioner argues constitute the split need to be broken into two groups. On the one hand there is a line of cases involving the valuation of real property which holds that hypothetical costs of sale should not be deducted from the appraised value for §506 purposes. *In re Balbus*, 932 F.2d 246 (4th Cir. 1991); *In re Coker*, 973 F.2d 258 (4th Cir. 1992); *Lomas Mortgage USA v. Wiese*, 980 F.2d 1279 (9th Cir. 1992), reversed and remanded on other grounds,

Lomas Mortgage USA v. Wiese, US , 113 S.Ct. 2925, 124 L.Ed. 676 (1993), *In re McClurkin*, 31 F.3rd 401 (6th Cir. 1994); *In re Winthrop Old Farm Nurseries, Inc.*, 50 F.3rd 72 (1st Cir. 1995). Those cases don't necessarily hold that liquidation value is an inappropriate standard for determining fair market value but hold rather that once fair market value is determined, further deductions of hypothetical closing costs should not be made.

That is a far cry from holding that wholesale value is foreclosure value and that foreclosure value in and of itself includes deductions for hypothetical costs of sale. Moreover, those concepts used in the "hypothetical costs of sale" cases may well apply to real estate appraisal but are inapplicable to the appraisal of personal property.

The second set of cases deals more directly with the appropriate valuation standard to use. *In re Trimble*, 50 F.3rd 530 (8th Cir. 1995); *In re Taffi*, 96 F.3rd 1190 (9th Cir. 1996). But as the Fifth Circuit clearly points out in its *en banc* decision in the case at bar, the *Trimble* circuit relied totally on the Fifth Circuit panel opinion and its "wholesale" - "retail" distinction, which opinion was subsequently vacated. It is not possible to know how the Eighth Circuit would approach this same issue in view of the Fifth Circuit's *en banc* decision.

Taffi is in fact a "hypothetical closing cost" case. *Taffi* goes on to say that land for IRS claim purposes should not be valued at foreclosure but at fair market value, criticizing the Fifth Circuit's *en banc* decision, *Ibid.*, at 1192.

There is a series of distinctions between that holding and the case at bar. First, while the valuation process does in both cases separate allowed secured claims from allowed

unsecured claims, IRS priority unsecured debt is significantly different from non-priority unsecured debt. 11 U.S.C. §507 (a) (8). In the context of a chapter 13, all IRS debt must be paid by the plan, 11 U.S.C. §1322 (a) (2), and the extent to which the payment stream allocated to the collateral, as opposed to the priority payment stream, pays the claim is largely problematic, only arising in the context of hardship discharge proceedings, See 11 U.S.C. 1328 (b).

Second, foreclosure valuation of real property is a special world and a departure from traditional fair market value appraisal of real property. But vehicles can enter the wholesale market easily. Their wholesale marketing is not a forced sale. An IRS auction of real estate is likely to bring an unrealistically depressed price. But even the IRS can get a reasonable approximation of fair market value at the vehicle auction. This is why the Ninth Circuit refuses, in *Taffi*, to discuss "high" or "low" blue book, *Ibid.*, at 1192. For this reason, forced sale or auction valuation of real estate is not favored by appraisers, but vehicle appraisers routinely place fair market value exclusively at wholesale, disregarding retail appraisal as meaningless.

In short, the split with *Trimble* is both shallow and illusory and the split with *Taffi*, on careful analysis, is thoroughly illusory.

III. THERE ARE FUNDAMENTAL FLAWS IN PETITIONER'S LEGAL REASONING

Petitioner contends, consistent with the dissent in the *en banc* decision, that because 11 U.S. C. §506 (a) states that the valuation must be conducted in light of the proposed disposition of the property, "retail" value must be employed, citing *United States v. Nordic Village, Inc.*, 503 US 30 (1992) ("every word given operative effect"). In order that

§506 (a) carry that plain meaning, an additional phrase must be added to the statute: "...and it follows, as light follows the night, that when the debtor proposes to keep the property, the property is inherently more valuable." But the mere decision by the debtor that the debtor will retain the property cannot and does not cause the property inherently to be worth more. It is clear that the process of valuation must keep in mind the proposed disposition of the property; it is equally clear that it need not and ordinarily should not attribute dollars to that fact.

It is significant that, in the name of *Nordic Village*, petitioner insists that the equally plain language of §506 (a), that the security interest and not the fee be valued, be totally ignored. For it does follow as light follows the night that the security interest can never be worth more than the fee. And while under many circumstances an appraiser could conclude that the value of the security interest and the value of the fee are identical, the appraiser must also recognize in the valuation process that only the security interest is being appraised, not the fee. In our case debtor's appraiser in fact gave petitioner the benefit of the doubt and appraised the fee and not the security interest. A more than generous outcome.

IV. THERE ARE FUNDAMENTAL FLAWS IN THE POLICY ARGUMENTS OF AMICUS

This case has attracted a number of members of the financial community seeking to participate as amicus. In order to ensure that they are true friends of the court and not just lobbyists, counsel for Mr. Rash has offered to those seeking to participate, including this case's present amicus,

a simple suggestion. If amicus contends that the Fifth Circuit *en banc* decision presents a financial challenge to the consumer automobile lending industry, support that position with proper statistical substantiation.

The argument of the lenders is ingenuously simple. The lenders will be paid more money under a "retail" valuation theory than under a "wholesale" valuation theory. But any sophisticated analysis of that argument would ask whether the increased payment duty might have the effect of depressing net recoveries by the lender. This analysis is the heart of the chapter 13 reform. In 1973 under the newly promulgated bankruptcy rules and official forms, See 57 *Marquette Law Review* 1 (1973), the Chandler Act bankruptcy courts began to confirm plans by wage earners seeking to pay out over time dividends to creditors substantially in excess of what the creditor might anticipate in a chapter 7. This creature was the progeny not of the debtors bar but of the creditors bar, an attempt to encourage greater repayment of debt by distressed consumers. Since then, including the codification of the chapter into the 1976 Bankruptcy Code, the system has recognized the importance of encouraging an effort to meet debt obligations by payment plans.

The "retail" lobbying effort, conducted by the automobile lending industry at both the congressional and judicial level, thwarts the very purposes embodied in chapter 13. The effort is mean-spirited and punitive and not motivated by a desire to maximize voluntary repayment effort.

CONCLUSION

For these reasons, the Court should deny the
Associates' petition for a writ of certiorari.

Dated December 19, 1996

Respectfully submitted,

JOHN J. DURKAY

Counsel of record

for Respondents,

Elray and Jean Rash

MEHAFFY & WEBER

P. O. BOX 16

BEAUMONT, TX 77704

(409) 835-5011

Debtor: Elroy Rash and Jean E. Rash

Case No.:

FILING OF PLAN

For Chapter 9, 11, 12 and 13 cases only. [X] Debtor's proposed plan dated 03-17-92 is attached.

PRIOR BANKRUPTCY CASE FILED WITHIN LAST 6 YEARS

Location Where Filed	Case Number	Date Filed
PENDING BANKRUPTCY CASE FILED BY ANY SPOUSE, PARTNER, OR AFFILIATE OF THE DEBTOR		
Name of Debtor	Case Number	Date
Relationship	District	Judge
REQUEST FOR RELIEF Debtor requests relief under the U.S. Code title 11 chapter specified in this petition.		
SIGNATURES		
X	Attorney	Date: March 17, 1992
Attorney: Robert E. Barron, P.C.		
JOINT DEBTORS		
We declare under penalty of perjury that the information provided in this petition is true and correct.		
X	-	X
Debtor: Elroy Rash	Joint Debtor: Jean E. Rash	Signature of Authorized Individual
Date: March 17, 1992	Date: March 17, 1992	Name:
X	X	Title:
Joint Debtor: Jean E. Rash	Date: March 17, 1992	Date:
EXHIBIT "A"		
[] Exhibit "A" is attached and made part of this petition.		
TO BE COMPLETED BY INDIVIDUAL CHAPTER 7 DEBTOR WITH PRIMARILY CONSUMER DEBTS (See P.L. 98-353 §322)		
We are aware that we may proceed under chapter 7, 11, or 12, or 13 of title 11, U.S. Code, understand the relief available under such chapter, and choose to proceed under chapter 7 of such title. If we are represented by an attorney Exhibit "B" has been completed.		
X		Date:
EXHIBIT "B"		
I, the attorney for the debtor(s) named in the foregoing petition, declare that I have informed the debtor(s) that (he, she, or they) may proceed under chapter 7, 11, 12, or 13 of title 11, U.S. Code, and have explained the relief available under such chapter.		
X		Date:

BEST AVAILABLE COPY

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

[Caption Omitted]

STATEMENT PURSUANT TO RULE 2016(b)

The undersigned, pursuant to Rule 2016(b), Rules of Bankruptcy Procedure, states that:

1. The compensation paid or promised by the Debtor(s), to the undersigned, is as follows:

For legal services rendered, Debtor(s) agrees to pay	\$2,500.00
Prior to the filing of this Statement, Debtor(s) has paid	\$1,000.00
Balance due	\$1,500.00

2. The Filing Fee *has been paid*.
3. The Services rendered or to be rendered include the following:

- (a) Analysis of the financial situation, and rendering advice and assistance to the client in determining whether to file a petition under Title 11, U.S.C.
- (b) Preparation and filing of the petition, schedules, statement of affairs and other documents required by the court.
- (c) Representation of the client at the first meeting of creditors.

4. The source of monies paid by the Debtor to the undersigned was and is, earnings, wages and compensation for services performed.
5. The undersigned has received no transfer, assignment or pledge of property from the Debtor.
6. The undersigned has not shared, or agreed to share any compensation with any other person, other than with members of the undersigned's law firm.

Dated: March 17, 1992

Respectfully submitted,

/s/ R.E.B.
ROBERT E. BARRON, P.C.
TBA No. 01820800
P.O. Box 1347
Nederland, TX 77627
Attorney for Petitioner

SCHEDULE A—REAL PROPERTY

Description and Location of Property	Nature of Debtor's Interest in Property	H W J C	Market Value of Debtor's Interest	Amount of Claim Secured
<i>House & Lot—716 N. Austin Street, Jasper, TX 75951</i>		J	\$39,000	\$15,390
<i>1/2 Acre, Jasper County, TX</i>		J	\$ 500	\$ 0
Total			\$39,500	

SCHEDULE B—PERSONAL PROPERTY

Description of Property	Location	H W J C	Market Value of Debtor's Interest Before Claim
1. Cash on hand. [x] NONE			
2. Checking, savings or other financial accounts, certificates of deposits or shares in banks, savings, thrift, building and loan and homestead associations, or credit unions, brokerage houses, or cooperatives.	J	\$ 100	
<i>First State Bank 204 Lamar Street Jasper, TX 75951 Account # 47-860-2</i>			
3. Security deposits with public utilities, telephone companies, landlords, and others. [x] NONE			
4. Household goods and furnishings, including audio, video, and computer equipment. <i>Misc.</i>	J	\$ 1,500	
5. Books; pictures and other art objects; antiques; stamp coin, record, tape, compact disc, and other collections or collectibles. [x] NONE			
6. Wearing apparel. <i>Misc.</i>	J	\$ 1,000	
7. Furs and jewelry. [x] NONE			
8. Firearms and sports, photographic, and other hobby equipment. [x] NONE			
9. Interests in insurance policies. [x] NONE			
10. Annuities. [x] NONE			

Description of Property	Location	H W J C	Market Value of Debtor's Interest
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. <i>IRA Account</i>	J	\$ 3,651	
<i>ADA Retirement</i>	J	\$13,000	
12. Stock and interests in incorporated and unincorporated businesses. [x] NONE			
13. Interests in partnerships or joint ventures. [x] NONE			
14. Government and corporate bonds and other negotiable and non-negotiable instruments. [x] NONE			
15. Accounts receivable. [x] NONE			
16. Alimony, maintenance, support, and property settlements, to which the debtor is or may be entitled. [x] NONE			
17. Other liquidated debts owing debtor including tax refunds. [x] NONE			
18. Equitable and future interests, life estates, and rights of power exercisable for the benefit of the debtor other than those listed in Schedule of Real Property. [x] NONE			
19. Contingent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust. [x] NONE			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counter claims of the debtor, and the rights to setoff claims. [x] NONE			

Description of Property	Location	H Market W Value of J Debtor's C Interest
21. Patents, copyrights, and other intellectual property.		
[x] NONE		
22. Licenses, franchises, and other general intangibles.		
[x] NONE		
23. Automobiles, trucks, trailers, and other vehicles and accessories.		
<i>1985 Lufkin Flat Bed Trailer</i>	J	\$ 2,400
<i>1987 Buick Regal LE</i>	J	\$ 2,750
<i>1988 Dodge Ram 50 Pickup</i>	J	\$ 3,425
<i>1989 Kenworth Tractor</i>	J	\$28,500
24. Boats, motors, and accessories.		
[x] NONE		
25. Aircraft and accessories.		
[x] NONE		
26. Office equipment, furnishings, and supplies.		
[x] NONE		
27. Machinery, fixtures, equipment, and supplies.		
[x] NONE		
28. Inventory.		
[x] NONE		
29. Animals.		
[x] NONE		
30. Crops—growing or harvested.		
[x] NONE		
31. Farming equipment and implements.		
[x] NONE		

32. Farm supplies, chemicals, and feed.	
[x] NONE	
33. Other personal property of any kind not already listed.	
[x] NONE	

Total	\$56,826
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SCHEDULE C—JOINT PROPERTY CLAIMED EXEMPT

Debtor elects the exemptions to which debtor is entitled under:
 [x] 11 USC 522(b)(2): Exemptions available under applicable
nonbankruptcy federal laws, and state
or local laws.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value w/o Deducting Exemption
Real Property			
House & Lot—716 N. Austin Street, Jasper, TX 76951	Texas Prop. Code Ann. S41.001(a)(1)	\$ 23,610	\$ 89,000
<i>Household goods and furnishings</i>			
Misc.	Texas Prop. Code Ann. S42.002(a)(1)	\$ 1,500	\$ 1,500
<i>Wearing apparel</i>			
Misc.	Texas Prop. Code Ann. S42.002(a)(5)	\$ 1,000	\$ 1,000
<i>Interests in pension or profit sharing plans</i>			
IRA Account	Texas Prop. Code Ann. S42.0021	\$ 3,651	\$ 3,651
<i>ADA Retirement</i>			
	Texas Prop. Code Ann. S42.0021	\$18,000	\$ 18,000
<i>Automobiles, trucks, trailers, etc., and accessories</i>			
1987 Buick Regal LE	Texas Prop. Code Ann. S42.002(a)(9)	\$ 1	\$ 2,750
	Texas Prop. Code Ann. S42.002(a)(9)	\$ 1	\$ 3,425
1988 Dodge Ram 50 Pickup	Texas Prop. Code Ann. S42.002(a)(9)	\$ 1	\$ 28,500
	Texas Prop. Code Ann. S42.002(a)(9)	\$ 1	

SCHEDULE D—CREDITORS HOLDING SECURED CLAIMS

Creditor Name and Address	Date Nature of Lien, Description & Value	Claim Amount and Special Notes *	Unsecured Portion
1. Account No. Associates Commercial Corp. P. O. Box 17280 San Antonio, TX 78217-0280	1989 Loan 1989 Kenworth Tractor Value: \$ 28,500.00	\$ 40,500.00	\$ 12,000.00 * Joint Debt
2. Account No. Chrysler Credit 14590 Heathrow First Pkwy. Houston, TX 77082	1989 Auto 1988 Dodge Ram 50 Pickup Value: \$ 8,425.00	\$ 4,250.00	\$ 825.00 * Joint Debt
3. Account No. Community Bank P. O. Box 2236 Jasper, TX 75951	1982 Mortgage House & Lot—716 N. Austin Street Jasper, TX 75951 Value: \$ 39,000.00	\$ 15,890.00	\$ 0.00 * Joint Debt
4. Account No. First National Bank of Jasper 301 Houston Street Jasper, TX 75951	1988 Auto 1985 Lufkin Flat Bed Trailer Value: \$ 2,400.00	\$ 5,678.00	\$ 3,278.00 * Joint Debt
5. Account No. GMAC P. O. Box 90600 Houston, TX 77290	1988 Auto 1987 Buick Regal LE Value: \$ 2,750.00	\$ 2,750.00	\$ 0.00 * Joint Debt

**SCHEDULE E—CREDITORS HOLDING
UNSECURED PRIORITY CLAIMS**

- [] Debtor has no creditors holding unsecured priority claim to report on this schedule E.

TYPES OF PRIORITY

- [] Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. S507(a)(2).

- [] Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees, up to a maximum of \$2000 per employee, earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. S507(a)(3).

- [] Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. S507(a)(4).

- [] Certain farmers and fishermen

Claims of certain farmers and fishermen, up to a maximum of \$2000 per farmer or fisherman, against the debtor, as provided in 11 U.S.C. S507(a)(5).

- [] Deposits by individuals

Claims of individual up to a maximum of \$900 for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. S507(a)(6).

- [X] Taxes and Other Certain Debts Owed to Governmental Units

Taxes, customs duties, and penalties owing to federal, state, and local government units as set forth in 11 U.S.C. S507(a)(7).

**SCHEDULE E—CREDITORS HOLDING UNSECURED
PRIORITY CLAIMS**

**PRIORITY TYPE: Taxes and Certain Other debts Owed to
Governmental Units**

Creditor Name and Address	Claim Date and Consideration	Claim Amount and Special Notes *	Amount With Priority
1. Account No. IRS Austin, TX 73301	1991 1040	\$ 2,745.00	\$ 2,745.00 * Joint Debt

Subtotal: \$ 2,745.00
Total: \$ 2,745.00

**SCHEDULE F—CREDITORS HOLDING UNSECURED
NONPRIORITY CLAIMS**

Creditor Name and Address	Date Claim was Incurred Consideration for Claim	Claim Amount and Notes*
1. Account No. Bealls P. O. Box 590 Jacksonville, TX 75766-0590	1992 Credit card purchases	\$ 89.00 * Joint Debt
2. Account No. Bridgestone P. O. Box 81315 Cleveland, OH 4481	1990 Credit card purchases	\$ 1,207.00 * Joint Debt
3. Account No. Choice—Visa P. O. Box 6700 The Lakes, NV 88901-6700	Credit card purchases	\$ 355.00 * Joint Debt
4. Citi Bank Master Card P. O. Box 6001 The Lakes, NV 88901-6001	Credit card purchases	\$ 922.00 * Joint Debt
5. Account No. Discover P. O. Box 9771 Sandy, NJ 84091-5011	Credit card purchases	\$ 1,031.00 * Joint Debt
6. Account No. Exxon P. O. Box 4294 Houston, TX 77097-0025	1992 Credit card purchases	\$ 149.00 * Joint Debt
7. Account No. First National Bank P. O. Box 700 Jasper, TX 75951	10-91 Signature Loan	\$ 2,000.00 * Joint Debt
8. Account No. Goodyear P. O. Box 5032 Sioux Falls, SD 57117-5032	Credit card purchases	\$ 1,623.00 * Joint Debt
		Subtotal: \$ 7,376.00

**SCHEDULE F—CREDITORS HOLDING UNSECURED
NONPRIORITY CLAIMS**
(Continuation Sheet)

Creditor Name and Address	Date Claim was Incurred and Consideration for Claim	Claim Amount and Notes*
9. Account No. Montgomery Ward P. O. Box 535001 Dallas, TX 75353	1990 Credit card purchases	\$ 1,061.00 * Joint Debt
10. Account No. Sears Roebuck & Co. # 8636 P. O. Box 29600 New Orleans, LA 70189	Credit card purchases	\$ 668.00 * Joint Debt
11. Account No. Texaco P. O. Box 2000 Bellaire, TX 77402-2000	1991 Credit card purchases	\$ 424.00 * Joint Debt
12. Account No. Texas Commerce Bank—Visa P. O. Box 15128 Wilmington, DE 19884-0001	Credit card purchases	\$ 172.00 * Joint Debt
13. Account No. The Home Depot P. O. Box 9771 Macon, GA 31297-9771	1992 Credit card purchases	\$ 110.00 * Joint Debt
14. Account No. USAA Mastercard— Visa P. O. Box 98390 Louisville, KY 40298-8390	1990 Credit card purchases	\$ 3,012.00 * Joint Debt

Subtotal: \$ 5,447.00
Total: \$ 12,823.00

**SCHEDULE G—EXECUTORY CONTRACTS AND
UNEXPIRED LEASES**

Name and Address of Other Parties to Instrument	Notes of Contract or Lease and Debtor's Interest
[X] No executory contracts or unexpired leases.	

SCHEDULE H—CODEBTORS

Name and Address of Codebtor	Name and Address of Creditor
------------------------------	------------------------------

[X] Debtor has no codebtors.

SCHEDULE I—CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

DEBTOR'S MARITAL STATUS: *Married*

DEPENDENTS OF DEBTOR AND SPOUSE:

NAME	AGE	RELATIONSHIP
Martin L. Rash	22	Son

EMPLOYMENT:

DEBTOR	SPOUSE
Occupation: Truck Driver	Dental Assistant
Name of Employer: Selfemployed	Dr. James R. Perkins
How Long Employed: 17 Years	
Employer Address: 716 N. Austin Street Jasper, TX 75951	140 W. Milam Street Jasper, TX 75951

INCOME:

Current monthly gross wages, salary, and commissions	\$ 0.00	\$ 770.00
Estimated monthly overtime	\$ 0.00	\$ 0.00
SUBTOTAL	\$ 0.00	\$ 770.00

LESS PAYROLL DEDUCTIONS

a. Payroll taxes and social security	\$ 0.00	\$ 180.00
b. Insurance	\$ 0.00	\$ 0.00
c. Union dues	\$ 0.00	\$ 0.00
d. Other:	\$ 0.00	\$ 0.00

SUBTOTAL OF PAYROLL DEDUCTIONS \$ 0.00 \$ 180.00

TOTAL NET MONTHLY TAKE HOME PAY \$ 0.00 \$ 640.00

Regular income from operation of business or profession or farm (attach detailed statement)	\$ 3,725.00	\$ 0.00
Income from real property	\$ 0.00	\$ 0.00
Interest and dividends	\$ 0.00	\$ 0.00
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	\$ 0.00	\$ 0.00
Social security or other government assistance	\$ 0.00	\$ 0.00
Pension or retirement income	\$ 0.00	\$ 0.00
Other monthly income	\$ 0.00	\$ 0.00
TOTAL MONTHLY INCOME	\$ 3,725.00	\$ 640.00
TOTAL COMBINED MONTHLY INCOME	\$ 4,365.00	

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

NONE

SCHEDULE J—CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

[] Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse".

Rent or home mortgage payment (include lot rented for mobile home)	\$ 371.00
Are real estate taxes included? Yes <input checked="" type="checkbox"/> No —	
Is property insurance included? Yes <input checked="" type="checkbox"/> No —	
Utilities: Electricity and heating fuel	\$ 245.00
Water and sewer	\$ 20.00
Telephone	\$ 225.00
Other	\$ 0.00
Home maintenance (repairs and upkeep)	\$ 0.00
Food	\$ 200.00
Clothing	\$ 100.00
Laundry and Dry cleaning	\$ 20.00
Medical and Dental expenses	\$ 150.00
Transportation (not including car payments)	\$ 175.00
Recreation, clubs, and entertainment, newspaper, magazines, etc.	\$ 65.00
Charitable contributions	\$ 50.00
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	\$ 0.00
Life	\$ 38.00
Health	\$ 219.00
Auto	\$ 125.00
Other Truck, Bobtail, Trailer Insurance	\$ 233.00
Taxes (not deducted from wages or included in home mortgages)	
Internal Revenue Service	\$ 609.00
Installment payments: (Do not list payments to be included in the plan)	
Auto	\$ 195.00
Other	\$ 0.00

Alimony, maintenance, and support paid to others	\$ 0.00
Payments for support of additional dependents not living at your home	\$ 0.00
Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$ 0.00
Other Road Expenses	\$ 400.00
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	\$ 3,440.00

FOR CHAPTER 12 AND 13 DEBTORS ONLY

A. Total projected monthly income	\$ 4,365.00
B. Total projected monthly expenses	\$ 3,440.00
C. Excess income (A minus B)	\$ 925.00
D. Total amount to be paid into plan Monthly	\$ 925.00

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT TEXAS**

[Caption Omitted]

SUMMARY OF SCHEDULES

Name of Schedule	Attached (Yes/No)	No. of Sheets	Amounts Scheduled
			Assets Liabilities Other
A—Real Property	Yes	1	\$ 39,500.00
B—Personal Property	Yes	3	\$ 56,326.00
C—Property Claimed As Exempt	Yes	1	
D—Creditor Holding Secured Claims	Yes	1	\$ 68,568.00
E—Creditors Holding Unsecured Priority Claims	Yes	2	\$ 2,745.00
F—Creditors Holding Unsecured Non-priority Claims	Yes	2	\$ 12,828.00
G—Executory Contracts and Unexpired Leases	Yes	1	
H—Codebtors	Yes	1	
I—Current Income of Individual Debtor(s)	Yes	1	\$ 4,365.00

Name of Schedule	Attached (Yes/No)	Amounts Scheduled			
		Sheets	Assets	Liabilities	Other
J—Current Expenditures of Individual Debtor(s)					
Debtor(s)	Yes 1				\$ 8,440.00
Total Number of sheets in All Schedules > 14					
Total Assets >	\$ 95,826.00				
Total Liabilities >		\$ 84,186.00			

**DECLARATION UNDER PENALTY OF PERJURY
BY INDIVIDUAL DEBTOR**

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 15 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date March 17, 1992

Signature /s/ Elray Rash
Elray Rash, Debtor

Date March 17, 1992

Signature /s/ Jean Rash
Jean E. Rash, Joint Debtor

Penalty for making a false statement or concealing property. Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. SS 152 and 3571.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

[Caption Omitted]

STATEMENT OF FINANCIAL AFFAIRS

1. Income from Employment or Operation of Business.

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this case calendar year.

Income, year to date:

Last year: 1991 \$56,302.00—Husband
\$9,860.00—Wife

Year before: 1990 \$57,663.00—Husband
\$9,717.00—Wife

Source(s): Wages

2. Income other than from Employment or Operation of Business.

State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case.

[X] None

3. Payments to Creditors.

a. List all payments on loans, installments purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within 90 days immediately preceding the commencement of this case.

[X] None

b. List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders.

[X] None

4. Suits, Executions, Garnishments and Attachments.

a. List all suits to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case.

[X] None

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case.

[X] None

5. Repossessions, Foreclosures and Returns.

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case.

[X] None

6. Assignments and Receiver.

a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case.

[X] None

b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case.

None

7. Gifts.

List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient.

None

8. Losses.

List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case.

None

9. Payments Related to Debt Counseling or Bankruptcy.

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

Payee: Robert E. Barron, P.C.

Address: TBA No. 01820800
P. O. Box 1347

Nederland, TX 77627

Date of payment: March 17, 1992

Payor: Elray Rash

Payment/Value: \$1,000.00

10. Other Transfers.

List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as a security within one year immediately preceding the commencement of this case.

None

11. Closed Financial Accounts.

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions.

Institution: *First National Bank of Jasper*

Address: *301 Houston Street, Jasper, TX 75951*

Type of account:

Account #: *065-359*

Final balance: *\$-0-*

Date of closing:

Institution: *First National Bank of Jasper*

Address: *301 Houston Street, Jasper, TX 75951*

Type of account:

Account #: *519-884*

Final balance: *\$-0-*

Date of closing:

12. Safe Deposit Boxes.

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case.

Institution: *First National Bank of Jasper*
 Address: *301 Houston Street, Jasper, TX 75951*
 Person with access: *Debtors*
 Address: *716 N. Austin Street, Jasper TX 75951*
 Contents: *Wills, Living Wills and Deed to Home*
 Surrender date: *Closed*

13. Setoffs.

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case.

None

14. Property held for Another Person.

List all property owned by another person that the debtor holds or controls.

None

15. Prior Address of Debtor.

If the debtor has moved within the two years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case.

None

16. Nature, Location and Name of Business.

a. If the debtor is an individual, list the names and addresses of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was self-employed professional within the two years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities

within the two years immediately preceding the commencement of this case.

b. If the debtor is a partnership, list the names and addresses of all businesses in which the debtor was a partner or owned 5 percent or more of the voting securities, within two years immediately preceding the commencement of this case.

c. If the debtor is a corporation, list the names and addresses of all businesses in which the debtor was a partner or owned 5 percent or more of the voting securities within two years immediately preceding the commencement of this case.

Debtor is: Individual/Joint.

Business: *Elray Rash*
 Address: *716 N. Austin Street,*
Jasper TX 75951

Nature of business: *Trucking*
 Date of operation: *October 23, 1991 to*
February 14, 1992

17. Books, records and financial statements.

a. List all bookkeepers and accountants who within the six years immediately preceding the filing of this bankruptcy case kept or supervised keeping of books of account and records of the debtor.

None

b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

None

c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

Name: *Debtor*
 Address:
 Unavailable records:

d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within two years immediately preceding the commencement of this case by the debtor.

[X] None

18. Inventories.

a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

[X] None

b. List the name and addresses of the person having possession of the records of each of the two inventories reported in a., above.

[X] None

19. Current Partners, Officers, Directors and Shareholders.

a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

[X] None

b. If the debtor is corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting securities of the corporation.

[X] None

20. Former partners, officers, directors and shareholders.

a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

[X] None

b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

[X] None

21. Withdrawals from a Partnership or Distributions by a Corporation.

If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other prerequisite during one year immediately preceding the commencement of this case.

[X] None

**DECLARATION UNDER PENALTY OF PERJURY
BY INDIVIDUAL DEBTOR**

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date *March 17, 1992*

Signature /s/ **Elray Rash**
Elray Rash, Debtor

Date *March 17, 1992*

Signature /s/ **Jean Rash**
Jean E. Rash, Joint Debtor

Penalty for making a false statement or concealing property. Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. SS 152 and 3571.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

[Caption Omitted]

CHAPTER 13—PLAN

ELRAY RASH and JEAN E. RASH, Debtors, propose this Plan for the adjustment of their debts.

1. Debtors submit to the supervision and control of the Trustee such portion of their future earnings and income as is necessary for the consummation of this Plan.

2. Debtors shall pay in full, in deferred cash payments, all claims which are entitled to priority under Section 507 of the Bankruptcy Code.

3. Beginning 30 days from the date the Chapter 13 Plan was filed, Debtors will pay to the Trustee \$925.00 each month for 60 months, to be distributed in the following manner:

A. The Trustee shall be paid \$92.50 each month for 60 months.

B. Debtor's attorney shall receive \$750.00 for 2 months beginning April 15, 1992, until a total of \$1,500.00 is paid.

C. The Internal Revenue Service shall be paid a total of \$2,745.00, without interest, in the following manner: \$47.33 per month for 58 months, beginning June 15, 1992.

D. Associates Commercial, which holds a first lien on Debtor's 1989 Kenworth, shall retain its lien, and be paid \$607.79 for 58 months beginning June 15, 1992, for a principal total or value of \$28,500.00, plus interest at 9% which amounts represent payment of the value of the collateral in full with interest over the life of the Plan.

Debtor will further keep the collateral insured during the life of the Plan. The undersecured portion of this claim, if any, shall be paid as an unsecured claim as set forth below. This creditor shall release its lien on the collateral securing the debt at such time as all payments have been made as set forth in this paragraph.

E. Chrysler Credit Corporation, which holds a first lien on Debtor's 1988 Dodge Ram 50 Pickup, shall retain its lien, and be paid \$73.04 for 58 months beginning June 15, 1992, for a principal total or value of \$3,425.00, plus interest at 9% which amounts represent payment of the value of the collateral in full with interest over the life of the Plan. Debtor will further keep the collateral insured during the life of the Plan. The undersecured portion of this claim, if any, shall be paid as an unsecured claim as set forth below. This creditor shall release its lien on the collateral securing the debt at such time as all payments have been made as set forth in this paragraph.

F. First National Bank of Jasper, which holds a first lien on Debtor's 1985 Lufkin flat bed trailer, shall retain its lien, and be paid \$51.18 for 58 months beginning June 15, 1992, for a principal total or value of \$2,400.00, plus interest at 9% which amounts represent payment of the value of the collateral in full with interest over the life of the Plan. Debtor will further keep the collateral insured during the life of the Plan. The undersecured portion of this claim, if any, shall be paid as an unsecured claim as set forth below. This creditor shall release its lien on the collateral securing the debt at such time as all payments have been made as set forth in this paragraph.

G. The unsecured creditors shall receive in pro-rata amounts all amounts remaining after priority and secured debts are paid.

4. Debtors shall pay the following secured debts outside the Plan:

<u>Secured Creditor</u>	<u>Amount</u>	<u>Collateral</u>
Community Bank	\$15,390.00	716 N. Austin Jasper, TX
GMAC	\$2,750.00	1987 Buick Regal LE

5. Debtors shall return the following collateral to the secured creditors described in full satisfaction of the debt.

NONE

6. Debtors shall void the non-purchase money security interest in exempt property under Section 522(f) U.S. Bankruptcy Code for the following creditor, and the debt shall be paid as an unsecured claim for this Plan:

NONE

7. Debtors will not incur any post-petition consumer debt except after notice to creditors and approval by the Court and the Standing Chapter 13 Trustee as specified in 11 U.S.C. 1305(c). Post-petition claims will be allowed only as specified in 11 U.S.C. 1305.

8. Upon confirmation of this Plan, the property of the estate shall vest in Debtors.

9. The filing of Debtor's Petition and the Debtor's Plan shall not be construed as a waiver of the Debtor's exemptions as claimed by them in their schedule of exemptions on file herein, as allowed by law.

DATED: March 17, 1992

/s/ Elray Rash
ELRAY RASH

/s/ Jean Rash
JEAN E. RASH

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

[Caption Omitted]

MOTION FOR RELIEF FROM STAY

ASSOCIATES COMMERCIAL CORPORATION (hereinafter "ASSOCIATES") files its Motion to Modify Stay for adequate protection and for cause and respectfully represents:

1. ELRAY and JEAN E. RASH filed a petition under Chapter 13 of the Bankruptcy Code on March 18, 1992. The Debtor has continued in possession of the property and is now operating its business and managing its property.

2. The Bankruptcy Court has jurisdiction over this proceeding pursuant to 28 USC § 1334 and 11 USC § 361 and 362.

3. ASSOCIATES is the Assignee for value of a sales agreement wherein Debtor is Purchaser. A true copy of the said contract and note between seller and Debtor dated March 30, 1989 is attached hereto as Exhibit "A," and hereby incorporated by reference. ASSOCIATES is the lien holder to that one certain vehicle as listed in Exhibit "A", which is the subject of said agreement, and the lien of ASSOCIATES is reflected on the Certificate of Title of said collateral, and a copy of the Certificate of Title reflecting same is attached hereto as Exhibit "B", and hereby incorporated by reference.

4. The business of the Debtor is hauling. Such use results in rapid deterioration of the collateral if not prop-

erly maintained. The Debtor has not paid the amounts due and the Debtor in possession is believed not properly maintaining the collateral.

5. The undersigned has attempted to determine whether Debtor has obtained independent insurance in force covering the said collateral. Plaintiff has reason to suspect there is no such insurance on said collateral. The Debtor is in default under the terms of the Contract for failing to make the required payments to ASSOCIATES.

6. ASSOCIATES is the holder of a secured claim against Debtor for the sum as shown on said Exhibits and has a valid security interest in the said collateral as shown in the aforesaid Exhibits. Secured creditor does not have, and has not been offered, adequate protection for its interest in the collateral listed in Exhibit "A" and "B". Such collateral is not necessary to Debtor's effective reorganization or rehabilitation and there is no reasonable prospect for a successful reorganization within a reasonable time.

7. Debtor has no known equity in the collateral listed in said Exhibits.

8. Debtor has no reasonable prospect for payment therefor, even if it could retain said assets.

9. If ASSOCIATES is not permitted to foreclose its security lien interest therein, it will suffer irreparable injury, loss, and damage.

10. In the alternative, ASSOCIATES is entitled to an order terminating the automatic stay in addition to 11 U.S.C. § 362(d)(2), for cause, including the failure by Debtor to tender adequate protection pursuant to 11 U.S.C. § 362(d)(1); and the Court should condition any order continuing the automatic stay as necessary to provide adequate protection for the Debtor's use of the Property, pursuant to 11 U.S.C. § 363(e).

11. "ANY OBJECTION OR REQUEST FOR HEARING MUST BE FILED WITH:

**UNITED STATES BANKRUPTCY CLERK
211 WEST FERGUSON—4TH FLOOR
TYLER, TEXAS 75702**

UNLESS A WRITTEN OBJECTION OR REQUEST FOR HEARING IS FILED WITHIN FIFTEEN (15) DAYS, INCLUSIVE OF MAILING TIME, FROM THE DATE SHOWN IN THE CERTIFICATE OF SERVICE HEREIN, THIS MOTION SHALL BE DEEMED TO BE UNOPPOSED AND THE COURT MAY ENTER AN ORDER WITHOUT A HEARING, *AT THE END OF THIRTY (30) DAYS*, REFLECTING THAT THE AUTOMATIC STAY HAS LIFTED."

The stay will terminate by operation of law at the expiration of the thirty (30) days, and an exparte order may be entered on presentation to the Court unless the Court extends the time for good cause shown. Plaintiff may enter into an agreement with the Debtor and/or Trustee whereby the stay would be continued provided certain payments are paid, insurance is maintained, and Plaintiff may seek interest, attorney fees and pre-petition arrearages.

12. Movant has conferred with opposing counsel and we cannot agree as to the disposition of this Motion.

WHEREFORE, Plaintiff prays that upon the expiration of the statutory period or after hearing of this Motion, the Stay pursuant to 11 USC § 362 be modified to direct or permit the said collateral to be delivered to ASSOCIATES or to permit it to foreclose its security lien interest herein, and grant it adequate protection such as may be provided in an order continuing the stay pending certain payments of principal, interest and insurance, and that it have such other and further relief as is just.

Respectfully submitted,

**HIRSCH, GLOVER, ROBINSON &
SHEINESS, P.C.**

**By: /s/ Ben L. Aderholt
BEN L. ADERHOLT
T/B/A 00909000
Admission ID 5877**

**1360 Post Oak Boulevard Suite 2300
Houston, Texas 77056
(713) 297-5824
Attorney for Plaintiff**

[Attached Exhibits Omitted in Printing]

[Proof of Service of Motion to Modify Stay Omitted]

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

[Caption Omitted]

**OBJECTION BY SECURED CREDITOR TO
CONFIRMATION OF PLAN**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now ASSOCIATES COMMERCIAL CORPORATION (hereinafter referred to as "ASSOCIATES") and would show that it is a secured creditor in this bankruptcy proceeding and files its objection of the Plan of Debtor.

1. By virtue of contracts and security agreements, the Debtor obligated itself for the purchase of certain vehicles, which contracts and obligations were assigned for valuable consideration to ASSOCIATES. The amount of the debt thereon as of date of filing was \$41,171.01. Said Debtor granted to ASSOCIATES a security agreement which is noted on the Certificate of Title, a true copy of which is attached hereto as Exhibit "A", and which is incorporated herein by reference.

2. Debtor has failed to propose in good faith a feasible plan concerning ASSOCIATES, or one which is fair and equitable.

3. Confirmation of the proposed plan is likely to be followed by liquidation or additional financial reorganization because the projected income will be insufficient to meet its operating expenses and plan payments.

4. ASSOCIATES, as holder of a claim, will not receive under the plan, property equal to the allowed amount of its claim.

5. ASSOCIATES was, at filing, owed \$41,171.01 upon the 1989 Kenworth Tractor Truck S/N1XKAD-29X7KS526898 and which is valued about \$41,000.00 if the unit is in ordinary condition.

Debtor is consuming these depreciating assets.

6. Objection is made because Debtor has defaulted under the aforesaid contracts with ASSOCIATES as a secured creditor; the Plan does not pay the creditor what it would receive under a Chapter 7 liquidation; the plan causes irreparable damage to the said secured creditor as the asset is depreciating and there are no payments proposed upon all of the legitimate debt and the said plan is unjust and inequitable to the said secured creditor.

WHEREFORE, PREMISES CONSIDERED, secured creditor prays this Court to set this objection and the confirmation of the plan for hearing and permit the secured creditor to show just cause why its claim should be allowed and the Objection heard and the plan denied, and for all other relief to which the said secured creditor may show itself justly entitled.

Respectfully submitted,

HIRSCH, GLOVER, ROBINSON
& SHEINESS, P.C.

BY: Ben L. Aderholt
BEN L. ADERHOLT
TSB NO. 00909000
Admission ID 5877

1360 Post Oak Boulevard, Suite 2300
Houston, Texas 77056
(713) 297-5823
Attorneys for Movant

[Certificate of Service Omitted]

TEXAS CERTIFICATE OF TITLE

TO A MOTOR VEHICLE

DO NOT ACCEPT TITLE SHOWING
ERASURE, ALTERATION OR MUTILATION

STATE OF TEXAS
DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION CERTIFIES
THAT THE APPLICANT HEREIN NAMED HAS BEEN DULY REGISTERED IN THE OFFICE
OF THE DEPARTMENT AS THE LAWFUL OWNER OF THE MOTOR VEHICLE DESCRIBED BELOW.

ODOMETER READING	TITLE NUMBER	DATE TITLE ISSUED	TITLE HOLDER
002267	23212078	05/10/89	DIESEL
KENWORTH 1989 TRK TR R29159 CAPACITIES INTON	1IXKAD29X7KS526898	17700	K688599
PREVIOUS OWNER JANOE KENWORTH TRUCKS - SAN ANTONIO, TX			
OWNER OF LIEN RECORDED ELRAY RASH 716 AUSTIN ST JASPER, TEX 75951		DATE OF LIEN 03/31/89 ASSOCIATES COMMERCIAL CORP PO BOX 17230 SAN ANTONIO, TEX 78217	
This Title must be signed in ink upon receipt		1ST LIEN RELEASED	BY _____ AUTHORIZED AGENT
		DATE OF LIEN	NAME AND ADDRESS OF 1ST LIEN HOLDER
		2ND LIEN RELEASED	BY _____ AUTHORIZED AGENT
		R.E. STOTZER, JR., ENGINEER - DIRECTOR	
		<i>Dian K. Neill</i> DIAN K. NEILL, DIRECTOR DIVISION OF MOTOR VEHICLES	

The applicant has affirmed under oath to be the owner of the above described motor vehicle, subject to the herein described lien and encumbrances and no others, and it agrees upon the official records of the Department that at the date of the issuance of this certificate, said motor vehicle is subject to the herein recited liens and encumbrances.

60091609

BEST AVAILABLE COPY

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

[Caption Omitted]

June 16, 1992

TRANSCRIPT OF HEARING ON (1) DEBTOR'S OBJECTION TO CLAIM OF ASSOCIATES COMMERCIAL CORPORATION, (2) MOTION BY ASSOCIATES COMMERCIAL CORPORATION TO PROHIBIT USE OF CASH COLLATERAL, (3) FINAL HEARING ON MOTION OF ASSOCIATES COMMERCIAL CORPORATION FOR RELIEF FROM AUTOMATIC STAY, BEFORE THE HONORABLE DONALD R. SHARP, UNITED STATES BANKRUPTCY JUDGE

* * * *

[2] COURTROOM DEPUTY CLERK: Elray Rash, 92-10305, Chapter 13; Debtor's Objection to Claim of Associates Commercial Corporation and Motion by Associates Commercial Corporation to Prohibit Use of Cash Collateral.

MR. BARRON: Bob Barron, for the debtor.

MR. ADERHOLT: Ben Aderholt, A-d-e-r-h-o-l-t, for Associates.

MR. BARRON: Your Honor, I would anticipate a thirty- to forty-five-minute hearing on this, if the Court desires a break.

MR. ADERHOLT: I agree with this estimation, Your Honor. I imagine we have a witness apiece, and that that's about it.

Your Honor, we also have a matter that is set on Page 9 at 1:30 which involves, in our view, approximately the

same issues. That is a 362 motion that's set at 1:30, and—

THE COURT: In this same case?

MR. BARRON: Yes, sir.

MR. ADERHOLT: Yes, sir. And I think the economy of the Court would be utilized if we could hear those together, if Mr. Barron doesn't have any objection.

MR. BARRON: I would agree with that, Your Honor.

MR. ADERHOLT: If it's all right with the Court.

THE COURT: We have two things set this morning, the [3] objection to the claim and the motion to use cash collateral.

MR. ADERHOLT: That's correct.

THE COURT: What's set at—

MR. ADERHOLT: The 362 matter.

MR. BARRON: Final hearing on motion to lift stay.

MR. ADERHOLT: Yes. It is set at 1:30 this afternoon. I do have—

THE COURT: You have no objection to hearing all of that at this time, Mr. Barron?

MR. BARRON: No, I have no objection, Your Honor.

THE COURT: Then, why don't we take a five-minute recess and we'll come back and hear your evidence on all of those matters.

(Recess from 11:10 a.m. until 11:15 a.m.)

COURT RESUMING AFTER RECESS

MR. ADERHOLT: Your Honor, in what order does the Court want to hear this?

THE COURT: Well, the objection to claim and the motion for relief from stay deal with the same property, do they not?

MR. BARRON: Yes, sir.

MR. ADERHOLT: Yes, sir.

THE COURT: So, all evidence—well, actually it all deals with the same thing, does it not?

MR. ADERHOLT: Yes, it really does, Your Honor. I [4] think the Court could hear them all at once and take all the evidence as to all three. I guess what I was asking is, who do you want to hear from as far as the evidentiary matters first?

THE COURT: Well, I think what we need to do is, Associates Commercial will assume the position of plaintiff and the debtor will assume the position of defendant, we hear all of the evidence that you have in one hearing going to all three matters, and then I'll rule on all three matters separately. Okay?

MR. BARRON: That's fine.

THE COURT: Proceed, Mr. Aderholt.

MR. ADERHOLT: Does the Court want to hear a preliminary?

THE COURT: Whatever you want. If you have something you want to tell me before you start putting on your evidence, feel free to do so. Otherwise, I'm ready.

MR. ADERHOLT: Your Honor, I think that if opposing counsel agrees with me, I believe that the amount of the debt as exhibited by our proof of claim is not in dispute. The proof of claim was filed on April 30, 1992, and the amount of that debt is \$41,171.01 as of the date of filing.

THE COURT: Do you agree with that, Mr. Barron?

MR. BARRON: I would agree, Your Honor.

THE COURT: Okay.

[5] MR. ADERHOLT: I believe that the issue, therefore, will be a question of value, adequate protection, and additional collateral on the lease proceeds.

THE COURT: Okay.

MR. ADERHOLT: Your Honor, we'll call Mr. Rash.

THE COURT: Mr. Rash, come forward, sir, and be sworn, please.

(Debtor sworn)

ELRAY RASH, DEBTOR, SWORN
 CALLED AS CREDITOR'S ADVERSE WITNESS
 CROSS-EXAMINATION

BY MR. ADERHOLT:

Q State your name for the Court, please, sir.

A Elray Rash.

Q Mr. Rash, you're familiar with the vehicle that is the collateral of Associates Commercial Corporation, are you not?

A Yes, sir.

Q What kind of vehicle is that, sir?

A It's a 1989 T-600 Kenworth truck.

Q What year?

A '89.

Q 1989. Would you say that that vehicle—well, that's one of these 10-wheel tractors you see on the highway, isn't it?

A Yes, sir.

[6] Q It's not a pickup?

A Right.

Q Would you say that that vehicle is in ordinary good condition or in poor condition?

A It's in good condition.

Q It's in good condition?

A Yes.

Q Not mint, but just average good condition; would you say that that's fair?

A Yes, sir.

Q Now, do you have this particular unit leased to Lane Freight?

A Yes, sir, I do.

Q What are the lease payments that you get back from Lane Freight?

A I get 70 percent of the gross revenue.

Q In terms of dollars, could you help the Court in giving your best estimate of what that would be—what, do you get paid every two weeks or weekly?

A Weekly.

Q In terms of a week, what would you say are those payments that you get from Lane Freight?

A Good weeks and bad weeks combined?

Q Yes, sir.

A I would say twelve hundred.

[7] Q Twelve hundred a week?

A On an average.

Q On an average. And you've been receiving those for how long from Lane Freight?

A I think I leased back on to Lane Freight like the first of March.

Q March 1?

A Somewhere in that area. I don't have the exact date.

Q And that lease has been from March 1, continuous until today?

A Yes, sir.

Q And do you expect that to continue?

A As far as I—you know, I hope so.

Q I understand. Have you gotten an appraisal from Smart's White GMC dealership here in Beaumont?

A Yes, sir.

Q What does that value—or what does that appraisal show as the value of that vehicle if you were going to sell that vehicle to a willing buyer?

A I don't have appraisal before me, but I believe it was like thirty-one eight, \$31,800. I'm not exactly sure on the numbers.

Q Well, if you're not sure, I don't want to have you guess.

MR. ADERHOLT: We'll pass the witness, Your Honor.

THE COURT: Do you wish to take your witness now?

[8] MR. BARRON: No questions, Your Honor.
 THE COURT: You may step down, Mr. Rash.
 MR. ADERHOLT: Your Honor, we'd call Mr. Copple.

(Witness sworn)

**DIRK COPPLE, CREDITOR'S WITNESS, SWORN
DIRECT EXAMINATION**

BY MR. ADERHOLT:

Q State your name to the Court, please, sir.

A Dirk Copple.

Q Mr. Copple, are you the Collections Manager for Associates Commercial Corporation?

A Yes, sir, I am.

Q Are you familiar with the kind of vehicle that you heard Mr. Rash testify to?

A Yes, sir, I am familiar with it.

Q Have you overseen and participated in the financing, purchasing, and selling of that kind of vehicle on few or many occasions?

A Many.

Q Have you done some detailed work on the book work to determine a value of the kind of vehicle that Mr. Rash was describing?

A Yes, sir, I have.

Q Do you have an opinion as to that value?

A Yes, sir, I do.

[9] Q Tell us, what all have you considered, in addition to your personal experience, in arriving at this value?

A Well, aside from my day-to-day operations, I contacted a couple of dealerships and I also used what we have as software that we use for booking out equipment, and also I've got the blue book here.

Q Now, the blue book is what, sir?

A The blue book is, basically, it's arrived from a company, not Associates, and it's used to arrive at average finance values. It's based upon day-to-day selling of the equipment.

Q Is it fair to say, then, that the industry blue book is a compilation of average sales, did you say?

A Yes, it is.

Q Tell us whether or not that is nationwide.

A Yes, it is nationwide.

Q Directing your attention to the particular vehicle, does Associates have a—Associates has a collateral interest in, what is your opinion of the current market value of that vehicle?

A It's about \$41,000 if it's in average shape, as a customer.

Q You heard Mr. Rash testify that it was in average good condition, and your opinion is that that vehicle is worth what?

A \$41,000.

[10] Q What do you describe as market value? What do you mean when you say market value?

A Market value is what an individual, average individual off the street, walks into a dealership, that would be a fair value for it.

Q What does the industry blue book value—what value does the industry blue book ascribe to this particular kind of vehicle right now?

A I booked it out for approximately a little over \$40,000.

Q The exact figure would be what?

A \$40,050.

Q \$40,050?

A Yes, sir.

Q When was the last time that the debtor paid Associates on this vehicle?

A January 16 of this year.

Q Is it correct, then, that you are four months down?

A Yes, sir, that is correct. He hasn't paid in four months.

Q Are the contract payments, under Exhibit No. 1, \$1,408.33?

A Yes, sir, they are.

Q So, if you marked four times that, do you get the figure of \$5,613.32?

A Yes, sir, you do.

[11] Q And is that what the arrearage is on this particular vehicle?

A Yes, sir, it is.

Q Now, tell me whether or not Associates has any particular risk involved in this kind of collateral to its security position.

A Well, besides the fact that the collateral is depreciating every day, we've also got—if a customer was to file bankruptcy, for instance, we would assume that his cash flow is less than adequate, which means probably that what's going to suffer is the maintenance of the equipment, which would lead me to believe that possibly it could have a breakdown, and if it does break down, Mr. Rash would probably testify to that it's very expensive to fix the 18-wheelers, and that opens up the possibility of a mechanic's lien, which does supersede our lien, and in the event that would happen and the customer did not have the adequate funds to get it released, us, as Associates, would have to pay for that to obtain our equipment back.

Q Now, have intervening liens by mechanics happened to Associates on other occasions?

A Yes, sir. It happens frequently.

Q In your experience, what—one other question before I get to that. What is the age of this particular vehicle?

A It's an '89.

[12] Q So, that makes it what, three years old?

A Yes, sir, coming up on four.

Q Is it about time for an out-of-frame overhaul or in-frame overhaul?

A Depending on the miles it runs, but on an average it's getting pretty close.

Q And what does that cost?

A Depending on if it's maintained properly, it costs anywhere from four to ten thousand dollars, depending. That would be a range.

Q Has Associates filed a perfection in this Court establishing its perfection on the lease payments from Lane Freight?

A We have filed, yes.

MR. ADERHOLT: We'll pass the witness, Your Honor.

THE COURT: Mr. Barron, do you have any questions of this witness?

MR. BARRON: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. BARRON:

Q Mr. Copple, you are Mr. Dirk Copple, is that correct?

A Yes, sir, that is correct.

Q How long have you been at Associates?

A I've been there for two years.

Q And how old are you?

[13] A I'm twenty-four years old.

Q Have you been buying or selling trucks since you've been at Associates?

A Yes, I have.

Q How many trucks have you bought?

A How many trucks have I bought?

Q Yes, sir.

A At foreclosure sale, I would estimate—I'm estimating here—probably fifteen to twenty-five.

Q You've gone to—you've held a foreclosure sale or Associates has repossessed the truck and sold it?

A Yes. That's what I mean by actually buying the equipment at foreclosure sale.

Q Would you consider that to be an open market, the foreclosure sale?

A No, I would not.

Q And the values that you receive at those foreclosure sales, as a percentage of the value that you just described to the Court, what would it be?

A Meaning—

Q If you went to foreclosure sale on this vehicle that you just said to the Court was worth \$41,000 on the market, what would you receive at the foreclosure sale?

A Most generally, nobody shows up at the foreclosure sales, but we try to obtain the market value, which is the retail [14] value.

Q Well, you've been to fifteen to twenty-five sales, and you've already told me that the value is not the same. So, as a percentage, what would the value be?

A Repeat your question. I'm not understanding where you're coming from on that.

Q Okay. You've told us that you've been to fifteen to twenty-five foreclosure sales.

A Yes, sir.

Q I think you told us that the value received at the foreclosure sales is not the market value of the truck. Didn't you tell us that?

A I don't believe I said that.

Q Well, then, let me ask you, I'll ask it again, then.

A Okay.

Q Is the value that you receive at your foreclosure sales the market value of the truck?

A Like I stated earlier, most the time no one shows up, but what we try to sell it for at the foreclosure sale is the market value.

Q I understand what you try to do. I'm going to ask it one more time. My question is: What value do you receive as a percent of that value you try to receive?

A I can't answer that. I mean, it varies depending on the value and shape of the equipment. I can't answer that [15] honestly.

Q Well, can you give us a range? 50 percent to 60 percent? Some kind of a range.

A Normally it sells for the average finance value, which would be about 10 percent lower.

Q 10 percent lower?

A Yeah.

Q So, at the foreclosure sale, of these fifteen to twenty-five foreclosure sales that you've been involved in, you received 90 percent of the value of the equipment?

A As I stated, we buy the equipment back at the foreclosure sale, and we bid approximately 10 percent less than the retail value of the equipment.

Q Have you ever had anybody besides yourselves bid on this equipment?

A Yes, sir, I have.

Q Other than yourselves, what do other people bid on the equipment?

A Of course, people that show up to these sales, they're always in for a bargain, and most the time they don't get that bargain, but I'll say, on the average, more than the average finance value, which I stated at 10 percent, and a little less than the retail value is what they're trying to get, so I'd say somewhere between, as far as the retail value, a little less than—just, say, on an average, if I [16] had to give a number, I'd say 8 percent less. In other words, trying for a bargain at the sales.

Q At a foreclosure sale of this equipment, people are willing to pay 90 percent plus of its retail value? That's what you're telling this Court?

A In the cases—yeah, as long as the equipment is in good shape, they're willing to pay.

Q Well, then, I guess what that means is that every one of these fifteen to twenty-five foreclosures that you've just described, someone else has bought the equipment, because all you were going to pay was 90 percent. Is that accurate?

A No, like I said, sometimes people don't even show up to them, so they can't—

Q Well, the ones that they have showed up, and you've testified that they're going to bid 92 plus percent of the retail value, I guess you sold that equipment to them; is that right?

A On some cases I have sold equipment at the sales.

Q Of these fifteen to twenty-five cases, how many, approximately, did Associates end up buying?

A If, say, take the number fifteen, we probably bought back twelve of them.

Q Twelve of them. So, then, we're talking about three cases, then, that someone paid 92 percent or more at foreclosure sale?

[17] A But what you've got to realize, there's probably ten of those—

THE COURT: Answer his question. Don't—

THE WITNESS: Okay.

A Repeat the question.

BY MR. BARRON:

Q Of the three cases remaining, then, is that the cases that you say that the public is out there coming to these foreclosure sales and paying 92 percent or more of the truck's retail value?

A Yes, sir.

Q And that actually happened?

A Yes. In some of those cases, yes, they have.

Q Not some of them. We're talking about three specific cases.

A The three, yeah. Well, I can't recall three specific incidents of, you know, the matter, but, yes, they do.

Q Wouldn't you agree with me, though, that most of the time people that go to the foreclosure sales that Associates have, they generally are going to end up—they offer you 50 to 60 percent of its value? I understand you don't take it, but that's what you get offered?

A You're saying—I didn't hear the numbers you threw out.

Q 50 to 60 percent of its retail value. I understand you don't take that number, but isn't that a fact that's what's [18] offered to you?

A I'd say that's a little low. I think people, when they're coming in for a bargain, they don't try to shoot that low.

Q All right, 60 to 70 percent. Is that fair?

A I would say probably 75 percent.

Q Now, other than participating in foreclosure sales of your own equipment, have you bought any trucks on the open market?

A No, sir, I sure haven't.

Q Have you sold any trucks on the open market?

A No, sir, I sure haven't.

Q This truck that you testified to the Court was worth \$41,000, what color is it?

A I don't know the color.

Q Have you seen this truck?

A No, sir, I'm going off of testimony and the tools that I use to book the truck out.

Q How many miles does this truck have?

A I'm not sure.

Q Would the mileage make a difference in its value?

A Yes, it would.

Q Did you consider that when you gave the Court a value?

A I took an average of the four tools that I used. No, I did not.

[19] Q You didn't consider the mileage when you gave the Court a value?

A I considered it would be an average mileage.

Q Does this truck have any damage to it?

A Not that I'm aware of.

Q Does this truck's engine leak oil? Is the transmission okay?

A Not that I'm aware of.

Q Do you know whether or not this truck has been maintained?

A No, sir, I sure don't.

Q Does Associates Commercial—are they a truck dealer?

A No, sir, we're sure not. We're a finance company.

Q You're a finance company. You're not in the business of buying and selling trucks?

A We're in the business of financing trucks, that is correct.

Q You don't have—I withdraw that question. Does Associates have any problem with the insurance that the debtor has on this truck?

A No, not that I'm aware of. It is covered.

Q We provided a copy of that to your attorney at the 341 meeting. That's not in issue?

A That is not in issue, no, sir.

Q The insurance is fine?

[20] A At this time it's not an issue.

Q Do you have—I heard you tell the Court about this big maintenance coming up and problems that you might have in the future. Do you have any knowledge as to whether or not the maintenance is current on the truck and it's being maintained as we stand here today?

A No, sir, I do not know if it has been maintained.

Q Now, you have looked at the loan application, I assume, with Mr. Rash in this case, and you know that this truck—would you believe this truck would be necessary for him to operate his business?

A Do I deem it necessary to operate his business?

Q Would you believe this truck is necessary for him to operate his business?

A Yes, sir.

Q Another point that Associates is here claiming today is that you have a lien on cash collateral, I assume from the revenue of the truck. What is it in your loan agreements that gives you a—your loan agreements have a lien on the truck, you've got a lien on the truck title, don't you?

A Uh-huh.

Q Other than that, what is it in your agreements that make you believe that you have a lien on the revenues of Mr. Rash and his truck?

A There's nothing in there that says that.

[21] MR. BARRON: Pass the witness.

REDIRECT EXAMINATION

BY MR. ADERHOLT:

Q Mr. Copple, have you participated—in fact, I believe you testified earlier that you had participated in many purchases and sales that Associates had financed; is that correct?

A That's correct.

Q Would you say that that's been hundreds of them?

A As far as the number of deals coming across the desk?

Q Yes.

A I'd say more than fifty, at the credit desk.

Q And are these purchases that are made that Associates participates in as a lender at the retail value?

A Average finance value, yes.

Q But is that interpreted by the parties that are purchasing it as a retail value?

A Yes.

MR. ADERHOLT: That's all I have of this witness, Your Honor.

MR. BARRON: No further questions, Your Honor.

THE COURT: Mr. Copple, you may step down.

MR. ADERHOLT: I call Mr. Thibodeaux.

MR. BARRON: Your Honor, Mr. Thibodeaux is my expert witness, and he's not under subpoena. He's out in the [22] courtroom at this time.

MR. ADERHOLT: Then that's all we have, Your Honor. If he objects to calling him, that's all right with me.

THE COURT: I don't think you have a right to call him under cross-examination, anyway.

MR. ADERHOLT: Yes. Well, that's all we have, Your Honor.

THE COURT: You rest?

MR. ADERHOLT: We do.

CREDITOR RESTS

THE COURT: Mr. Barron?

MR. BARRON: Your Honor, we would call Mr. Steven Thibodeaux.

(Witness sworn)

DEBTOR'S EVIDENCE

STEVEN THIBODEAUX,
DEBTOR'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. BARRON:

Q Would you state your name, please, sir.

A Steven Thibodeaux.

Q How are you employed?

A By Smart's Truck & Trailer.

Q What do you do out there?

A Salesperson.

Q Salesperson?

[23] A Uh-huh.

Q And how long have you been out there?

A Ten years.

Q How old are you?

A Thirty-two.

Q What is Smart's Truck & Trailer in the business of?

A Trucks.

Q Do you buy and sell trucks?

A Buy and sell, repair and all, yes.

Q We think of a car dealership. You all a truck dealership, is that accurate?

A Yes, sir.

Q What lines do you carry?

A White GMC and GMC medium-duty.

Q Even though those are the lines that you carry and sell, are you as familiar with other types of trucks?

A Yes, sir, I am.

Q Have you bought and sold all types of trucks in the last ten years?

A Yes, sir.

Q Do you all also have a used-truck lot?

A Yes, sir, we do.

Q Do you carry Kenworths on that lot?

A From time to time, yes.

Q Have you had the opportunity to inspect a 1989 Kenworth [24] that's owned by Mr. Rash?

A Yes, sir, I have.

Q And that was a 1989 Kenworth T-600A. Have you looked at that truck?

A Yes, sir, I have.

Q When did you do that?

A I think about April, the end of April.

Q Did you look it all over?

A Yes, sir, I did.

Q Check the mileage on it?

A Yes, sir.

Q And look at the engine, the transmission?

A Yes, sir.

Q Completely inspect the truck?

A Yes, sir, I did.

Q What was the purpose of that inspection?

A To give him a wholesale value of the truck.

Q Did you arrive at a value of that truck?

A Yes, sir, I did.

Q What is that value?

A Thirty-one. eight seventy-five is the value I gave him.

Q \$31,875?

A Correct.

Q How did you arrive at that value in addition to inspecting it?

[25] A Well, I took the figures from the truck blue book to establish the retail price, backed off 25 percent for wholesale price.

Q Did you consider in that number, \$31,875, the condition of the truck and what it looked like to you?

A Yes, sir, I did.

Q Is that the amount that you would pay to Mr. Rash or Associates Commercial if they brought it in to you to sell it to you?

A Yes, sir.

Q Would you pay any more than that for it, or is that exactly what you would pay for it?

A I don't think I'd pay any more.

Q Did the truck appear to be maintained properly?

A To the best of my knowledge, yes.

Q Well, you're about the only expert we've got. You're in the business. Did it look to you like it was being maintained properly?

A Yes, sir, it did. It looked like it has, yes, sir.

Q Did you see anything on there that was wrong or should have been done differently?

A No, not really, no.

Q What color is that truck?

A It's a brownish.

MR. BARRON: I pass the witness.

[26] CROSS-EXAMINATION

BY MR. ADERHOLT:

Q Mr. Thibodeaux, did you not deliver to Mr. Barron a statement that the retail value of this vehicle was \$42,500?

A On the sheet that I turned in to Mr. Rash—and he carried it over to Mr. Barron—there was a retail and wholesale number on it, yes, sir.

Q And you signed it?

A Correct, sir.

Q And that was true, wasn't it?

A Yes, sir.

Q And you said the retail value on that day—and when was that?

A I think it's in April, about April 27, 28.

Q You said that the retail value was \$42,500 in April of this year?

A Yes, sir, according to the truck blue book.

Q Now, a three-year-old vehicle that's been on long haul, is there an overhaul coming due pretty soon, on the average?

A Probably in another couple of hundred thousand, to my knowledge.

Q So, that cost is—what would be the range of the cost of that, three to ten thousand, four to ten thousand dollars?

A Yes, sir.

Q That's what you all charge all the time, isn't it, for [27] that kind of thing?

A Yes, sir.

Q Now, if Gulf Coast Kenworth just closed a sale on an identical vehicle for \$45,000, would you say that's unreasonable?

A Say that one more time, now?

Q If Gulf Coast Kenworth had conducted a sale, a retail sale of this identical kind of vehicle just last week for \$45,000, would you say that's unreasonable?

A No, sir, not as a retail sale. No, sir, it's not.

Q Of course, if you as the dealer at a Smart's dealership, if you buy a vehicle, then you've got to figure some make-ready costs in order to get this ready for retail purposes?

A Reconditioning.

Q You're going to have to figure salesman commission to pay people like you?

A Right.

Q Is that right?

A Right.

Q And so you can't pay retail value if you're going to make a profit?

A Not as a dealer, no, sir, I cannot.

Q That's right. Now, people coming onto your floor, then, who are going to buy a vehicle like Mr. Rash's vehicle that you've described here, in average good condition, you stick [28] with your figure that you would try to get \$42,500 for it?

A No, sir, I don't. I said as a wholesale figure of \$31,875 is where I would be.

Q I understand. What I'm talking about is, if you have a customer come in onto the floor—

A Okay, I'm sorry. Yes.

Q —to buy it from you.

A Somewhere right in there, yes, sir.

Q And you think that's pretty fair and reasonable?

A To the best of my knowledge, yes, sir.

Q I understand that's the best you can do. There's no doubt in your mind, is that right?

A None.

MR. ADERHOLT: No further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. BARRON:

Q Mr. Thibodeaux, Associates Commercial is not in the business of buying or selling trucks, are they? They don't have a retail lot, do they?

A Not to the best of my knowledge, no.

Q They finance trucks?

A Correct.

Q Would the amount that Associates Commercial would be able to receive for this truck today be about the same that Mr. Rash would receive for this truck if he traded it in?

[29] MR. ADERHOLT: Objection, Your Honor. He doesn't know what Associates could or couldn't do. That's a highly speculative kind of thing. I really think that's outside the fair—

THE COURT: Without some foundation that he would know that, I guess that's sustained. I don't know whether he would know that or not.

BY MR. BARRON:

Q If Mr. Rash was to take this truck into the market today and trade it in on another truck—and Mr. Rash is not a dealer, he's not going to get it ready, he's just going to sell it—is the amount that he would receive for that truck \$31,875?

A On trade-in?

Q Yes.

A Yes, sir.

MR. BARRON: I pass the witness.

MR. ADERHOLT: Nothing further, Your Honor.

MR. BARRON: Your Honor, I call Mr. Rash.

ELRAY RASH, DEBTOR, SWORN DIRECT EXAMINATION

BY MR. BARRON:

Q Mr. Rash, how do you use this truck in your business?

A Hauling freight for Lane Freight. You know, it's my only source of income.

[30] Q I'm sorry, would you speak up. I can't hear you well.

A I drive the truck myself and have it leased to Lane Freight. You know, it's my total source of income for me and my family.

Q If you didn't keep this truck, you would have no ability to make your payments under Chapter 13, is that correct?

A That's correct.

Q How many miles does this truck have on it?

A 380,000.

Q How long is the warranty on this truck?

A I have 750,000 on the rear ends. I have a 600,000 extended warranty on the engine.

Q Now, this warranty, does that cover this overhaul stuff that you heard Associates Commercial talking about?

A I would think so, with the exception of the labor. Cummings pays the parts. I would have to pay the labor.

Q But all that's anticipated in the warranty that you still have a whole lot of miles left on, is that correct?

A Yes, sir, sure do.

Q Have you been maintaining the truck?

A I sure have.

Q What have you been doing in that regard?

A I grease it every 3,000 miles. I change oil, the engine, you know, filters and all that ever 10,000 miles.

Q Is this truck fully insured?

[31] A Yes, sir, it is.

Q Did you sign or do anything to give Associates Commercial a lien on your truck revenues?

A Not to my knowledge.

Q Have you been making all of your Chapter 13 payments?

A Yes, sir, I sure have.

Q How much are your payments?

A Nine twenty-five, I think. I'm not for sure. I believe it's nine twenty-five.

Q And are you current with those?

A Yes, sir.

Q I believe your case is set for confirmation July 22?

A Yes, sir.

Q And do you have any reason to believe it won't be confirmed on that day?

A No, sir.

Q Is the money that you're paying to the trustee right now being held by the trustee pending confirmation?

A That, I don't know. I just pay it to the trustee. I guess it is. I'm not familiar with that part of it.

Q I understand, but you have made every payment that you're scheduled to make?

A Yes, sure have.

Q Have you been making those on time?

A Yes, sir.

[32] MR. BARRON: I pass the witness, Your Honor.

THE COURT: Do you have any cross-examination?
MR. ADERHOLT: No, Your Honor.

THE COURT: You may step down, Mr. Rash. Do you have any further witnesses, Mr. Barron?

MR. BARRON: No, Your Honor. Debtor will rest.

DEBTOR RESTS

THE COURT: Mr. Aderholt, do you have any rebuttal?

MR. ADERHOLT: No rebuttal, Your Honor.

THE COURT: Do you have any closing argument?

MR. ADERHOLT: I do, sir.

CLOSING ARGUMENT ON BEHALF OF CREDITOR

MR. ADERHOLT: Your Honor, in the motion to prohibit the use of collateral that Associates filed—and we would ask for the Court to additionally take notice of our lien perfection which was filed on May 14 in this case—

THE COURT: I have no evidence of that at all, Mr. Aderholt.

MR. ADERHOLT: Well, the debtor testified that there was a lease, and the creditor, Associates, testified that we had filed a perfection of that lien, and under 363(a) lease proceeds are additional cash collateral, and we are asserting that lien claim on those. It is uncontested that those lease payments—that this equipment has been leased and that we are entitled to those rent proceeds under 363(a). [33] We're entitled to all of them. As part of our argument, we would suggest to the Court adequate protection payments to maintain our depreciating collateral. We would be satisfied with an amount of the contract payments, which is \$1,408 a month. I believe the testimony from the debtor was that he gets \$1,200 a week from Lane Freight under that lease, and so we are—it's our position that we would be adequately protected with just contract payments of \$1,408 per month.

THE COURT: Your contract shows \$1,610 a month.

MR. ADERHOLT: Yes, sir, there is part of Exhibit 1, a reschedule, which we extended the debtor a rescheduling, reducing that from \$1,600 to \$1,400—

THE COURT: \$1,408.33.

MR. ADERHOLT: —even though the debtor never made a payment under that, because he testified that his last payment was in January, January 16, 1992.

Your Honor, just another minute. What we are suggesting, and our testimony has shown, is that Associates has got a very particular risk. When we've got an on-the-road truck like this, the risk of intervening liens, the risk of—or threat to our lien position is extremely high when a debtor in bankruptcy cannot obtain money to pay for mechanic's liens, and this is just an ordinary experience of these truckers. If we are maintained at our payoff debt, if there is a parity between debt and value—and that's our [34] testimony, is that it was worth \$41,000 in average condition, and we believe that that's the only testimony here as to what the retail market is. Mr. Thibodeaux went into a lot of discussion about what wholesale dealers would give. That's not the issue here. The question is what could we get between a willing buyer and a willing seller at retail, and Associates is not interested in foreclosing and having a foreclosure on this vehicle. We would hold it until we got a retail value for it. That would be ridiculous for us to have a deficiency on this vehicle in a bankruptcy situation. We would want and we would expect to get the retail, and debtor's expert testified that he thought the retail value was right at forty-two to forty-one thousand dollars. Now, it's Mr. Copple's—the blue book industry statement is that the value of this vehicle right now is \$40,000, \$40,050, to be exact, but the risk that Associates has is an intervening mechanic's lien, and it just occurs all the time on equipment that's three years old, that's got 400,000 miles on it.

THE COURT: But that's not a risk that the bankruptcy creates. That's a risk that Associates is in every time they finance a truck. That's not anything unusual.

MR. ADERHOLT: That's correct. However, the payments and the value are in parity, unless we have a bankruptcy filing and we don't get paid our contract payments, and that's when the debt then becomes a greater risk if we are [35] stopped from realizing any adequate protection. And what the debtor proposes—and we've got an objection to the plan, but the risk right now that we're having is that that vehicle is on the road running right now, and our debt and the value are at parity, and if we have an intervening lien and there's no way for us to get paid by this debtor, and his payments are nine hundred, I think he said, that is just absurd. There's no way in the world, if he's getting twelve hundred a week. Lease payments, we have a lien on. We have a right to that lease payment under 363(a), and we're conceding and all we want is to be maintained as we go with the value, and we simply cannot undergo this risk without any kind of continuing payments or we're going to be in serious—we're going to be under water in a serious condition.

THE COURT: Mr. Barron?

CLOSING ARGUMENT ON BEHALF OF DEBTOR

MR. BARRON: Your Honor, the debtor would submit that the only credible evidence that the Court has heard today on value is from the appraiser that's independent and doesn't really have an interest in this case. The value that he set was \$31,875.

This argument about wholesale and retail is an argument that I've done my best to avoid the Court ruling on and having to make a decision in this area. I think the Court can still avoid a ruling in that area today because of the [36] testimony, the expert opinion testimony. The reason that I've been avoiding this retail/wholesale argument on these vehicles is that it creates a very good tension between the debtor and the creditors and helps get cases settled because nobody is really sure what's going to happen. I would hope that the Court could con-

sider this case strictly on the testimony offered as to value and not make any indication as to "I'm going to use the wholesale" or "I'm going to use the retail," but strictly decide it on the basis of the expert testimony offered. We've had one witness that has had ten years of experience, that buys and sells trucks all day long, that says this truck is worth \$31,875. We have another witness that has done no buying and selling of trucks, has conducted foreclosure sales, has not even seen the vehicle in question, and I think that substantial weight of the evidence would go towards considering the value of \$31,875, as established by the debtor's witness. That is in relation to the claims hearing, Your Honor.

As far as the motion to lift stay is concerned, the debtor concedes there is no equity in the vehicle. However, I believe the debtor has proved that it's necessary to reorganization—in fact, the creditor's representative admitted that it would be necessary for debtor's reorganization that creditor has no problems on the insurance. The debtor has testified and the debtor's expert [37] witness has testified that the truck is being maintained and does appear to have all the proper maintenance schedules met on it. There is a warranty on the truck that would cover any major problems with it for the next several hundred thousand miles, and the debtor is current on his Chapter 13 payments. The plan is set for confirmation on July 22. As soon as the plan is confirmed, the trustee will be again issuing payment to Associates Commercial.

As far as the cash collateral issue, Your Honor, I'm still at a loss on that one. I have requested, in writing, a copy of the security interest on lease payments and I've gotten no response to that, and then we've listened to it today, and I've heard no response to it. Yeah, there's money coming in made by the truck. That's what it's supposed to do. But there is no document granting a security interest in this collateral. The Bankruptcy Code itself does not give a security interest, and I think that's

what the creditor is saying. If that's what he's saying, the Bankruptcy Code doesn't give a security interest. There is no evidence before the Court of any security interest in any revenue that this truck produces. So, I would submit that the motion to prohibit use of cash collateral must be denied. I would submit that the value of this vehicle should be set at \$31,875 and that the motion to lift stay should be denied, except that adequate protection might be required that the [38] debtor maintain insurance and continue making his Chapter 13 payments.

Thank you, Your Honor.

RULING OF THE COURT

THE COURT: Well, as far as the motion to prohibit use of cash collateral, I agree with Mr. Barron. There has to be some kind of a document that grants a pre-petition interest in the products and the offspring, et cetera, as the Code is—and the money that property produces. The collection manager concedes that he has no such document as that, and I think that 363 of the Code does provide that cash collateral extends to proceeds, products, offsprings, rents or profits as provided in 552(b), but 552(b) only allows that if there is a pre-petition document that the parties have entered into granting that kind of a security interest. So, the motion to prohibit use of cash collateral is denied.

Mr. Barron, would you prepare an order.

MR. BARRON: Your Honor, I think I submitted an order with our response. If the Court has it, it would probably do; if they don't, I'll send another one.

THE COURT: You did.

MR. ADERHOLT: Your Honor, perhaps I was remiss in pointing out—

THE COURT: Mr. Aderholt, do not start making arguments while I'm ruling.

[39] MR. ADERHOLT: I'm sorry.

THE COURT: As to the question of the value of the vehicle, which is the question that's going to have to be answered to rule on both the objection to the allowance of claim and the motion for relief from stay, I believe, Mr. Barron, that this hearing has squarely placed this Court in a position where I'm going to have to adopt either the wholesale or the retail value. We have, clearly, testimony from the only expert in this case that retail value of this vehicle is \$42,000, that the wholesale value is \$31,850, and we clearly have a situation where the debtor is arguing for the wholesale value and the creditor is arguing for the retail value, and I know that that question has been considered by various bankruptcy courts around the country, and I know of at least two cases where the wholesale value has been determined to be the proper value to be used in connection with automobiles, but in that case they were dealing with family cars, not with trucks that were on the road producing income. I'm not prepared today, gentlemen, without looking at that, to rule on that. I think that is a very important question, and I think once we adopt that position, we are going to be pretty well tied to it, until an appellate court tells us otherwise, and I'm not aware of an appellate court, or certainly not the Fifth Circuit, having given us any guidance on that. All that by way of saying, [40] gentlemen, that I'm going to consider that question, and that question is going to be dispositive of both of these motions, and I'm going to have to consider that and get you a ruling out on it in a matter of a few days.

MR. BARRON: Does the Court desire us to submit any law on that?

THE COURT: Beg your pardon?

MR. BARRON: Does the Court desire us to submit any law on that within a certain—

THE COURT: If you gentlemen desire to submit any arguments or any briefs on that issue, please feel free to do so, and I will consider that.

MR. BARRON: Can we have about ten days, Your Honor, for that? It's important to me.

THE COURT: Yes, you can have ten days on that before I'll get a ruling out.

So, the matter is under advisement.

MR. ADERHOLT: Will the Court let me make a statement to the Court on one of these matters, if I could, please?

THE COURT: No. We've had the hearing, Mr. Aderholt. It's over.

MR. ADERHOLT: Will the Court allow me a bill to state what I was going to present to the Court on a matter?

THE COURT: Well, you have your appellate rights, if you don't like my ruling, Mr. Aderholt. I don't understand [41] what you're trying to do.

MR. ADERHOLT: What I think I have the right to do is to show, under a bill, what I am offering to the Court to show on the motion to prohibit use of collateral.

THE COURT: Mr. Aderholt, I have ruled on that motion. Now, you may request a rehearing, or you may appeal that decision.

MR. ADERHOLT: We'll file a motion for rehearing, then.

THE COURT: That's the proper procedure for you to use if you are not satisfied with my ruling.

MR. ADERHOLT: Thank you, Your Honor.

(Proceedings concluded at 12.20 p.m.)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

[Caption Omitted]

ORDER

The Motion of Associates Commercial Corporation for Relief from Stay and the Objection of Debtors to allowance of claim of Associates Commercial Corporation came before the Court for consolidated hearing. The Court considered the pleadings, the evidence adduced, the arguments and briefs of counsel and for reasons contained in a written opinion dated contemporaneously herewith, it is:

ORDERED, ADJUDGED AND DECREED that the Motion for Relief from Stay be and it is hereby DENIED.

It is further ORDERED, ADJUDGED AND DECREED that Associates Commercial Corporation's secured claim is \$31,875.00 and the remainder of its claim is unsecured.

SIGNED this 31st day of December, 1992.

/s/ Donald R. Sharp
DONALD R. SHARP
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

[Caption Omitted]

**FIRST AMENDED
CHAPTER 13 PLAN**

ELRAY RASH and JEAN E. RASH, Debtors, propose this Plan for the adjustment of their debts.

1. Debtors submit to the supervision and control of the Trustee such portion of their future earnings and income as is necessary for the consummation of this Plan.

2. Debtors shall pay in full, in deferred cash payments, all claims which are entitled to priority under Section 507 of the Bankruptcy Code.

3. Beginning 30 days from the date the Chapter 13 Plan was filed, Debtors will pay to the Trustee \$1050.00 each month for 60 months to be distributed in the following manner:

A. The Trustee shall be paid \$105.00 each month for 60 months.

B. Debtor's attorney shall receive \$835.00 for 2 months beginning April 15, 1992, and then \$33.20 for 25 months until a total of \$2,500.00 is paid.

C. The Internal Revenue Service shall be paid a total of \$2,745.00, without interest, in the following manner: \$47.33 per month for 58 months, beginning June 15, 1992.

D. Associates Commercial, which holds a first lien on Debtor's 1989 Kenworth, shall retain its lien, and be paid \$679.77 for 58 months beginning June 15, 1992, for a principal total or value of \$31,875.00, plus interest at

9% which amounts represent partial payment of the value of the collateral in full with interest over the life of the Plan. Debtor will further keep the collateral insured during the life of the Plan. The undersecured portion of this claim, if any, shall be paid as an unsecured claim as set forth below. This creditor shall release its lien on the collateral securing the debt at such time as all payments have been made as set forth in this paragraph.

E. Chrysler Credit Corporation, which holds a first lien on Debtor's 1988 Dodge Ram 50 Pickup, shall retain its lien, and be paid \$108.91 for 36 months beginning April 15, 1992, for a principal total or value of \$3,425.00, plus interest at 9% which amounts represent payment of the value of the collateral in full with interest over the life of the Plan. Debtor will further keep the collateral insured during the life of the Plan. The undersecured portion of this claim, if any, shall be paid as an unsecured claim as set forth below. This creditor shall release its lien on the collateral securing the debt at such time as all payments have been made as set forth in this paragraph.

F. First National Bank of Jasper, which holds a first lien on Debtor's 1985 Lufkin flat bed trailer, shall retain its lien, and be paid \$74.64 for 58 months beginning June 15, 1992, for a principal total or value of \$3,500.00, plus interest at 9% which amounts represent payment of the value of the collateral in full with interest over the life of the Plan. Debtor will further keep the collateral insured during the life of the Plan. The undersecured portion of this claim, if any, shall be paid as an unsecured claim as set forth below. This creditor shall release its lien on the collateral securing the debt at such time as all payments have been made as set forth in this paragraph.

G. The unsecured creditors shall receive in pro-rata amounts all amounts remaining after priority and secured debts are paid.

4. Debtors shall pay the following secured debts outside the Plan:

<i>Secured Creditor</i>	<i>Amount</i>	<i>Collateral</i>
Community Bank	\$15,390.00	716 N. Austin Jasper, TX
GMAC	\$ 2,750.00	1987 Buick Regal LE

5. Debtors shall return the following collateral to the secured creditors described in full satisfaction of the debt.

NONE

6. Debtors shall void the non-purchase money security interest in exempt property under Section 522(f) U.S. Bankruptcy Code for the following creditor, and the debt shall be paid as an unsecured claim for this Plan:

NONE

7. Debtors will not incur any post-petition consumer debt except after notice to creditors and approval by the Court and the Standing Chapter 13 Trustee as specified in 11 U.S.C. 1305(c). Post-petition claims will be allowed only as specified in 11 U.S.C. 1305.

8. Upon confirmation of this Plan, the property of the estate shall revert in Debtors.

9. The filing of Debtor's Petition and the Debtor's Plan shall not be construed as a waiver of the Debtor's exemptions as claimed by them in their schedule of exemptions on file herein, as allowed by law.

DATED: January 18, 1993

/s/ Elray Rash
ELRAY RASH

/s/ Jean E. Rash
JEAN E. RASH

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

[Caption Omitted]

**ORDER CONFIRMING THE DEBTOR'S
FIRST AMENDED PLAN AND RELATED ORDERS**

After notice and a hearing, wherein the Court considered the matters on file herein, including the Trustee's Report of Creditors Meeting held pursuant to Section 341 of the Bankruptcy Code, and all objections to confirmation of the Plan, the Court finds:

1. Written notice of the Meeting of Creditors held pursuant to 11 U.S.C. 341 and of this hearing on the confirmation of the Plan was given as required by Rule 2002; and
2. All scheduled creditors have been served with a copy of the Debtor's Plan, or a summary thereof in accordance with Rule 3015.
3. The Plan as presented for confirmation (hereinafter referred to as "the Plan") complies with the provisions of Chapter 13 of Title 11 of the United States Code and the other applicable provisions of said Title; and
4. With respect to each allowed secured claim provided for by the Plan, the holder of such claims either accepted or was deemed to have accepted the Plan or in the alternative
 - a. The Plan provides that the holder of such claims retain the lien securing such claims; and
 - b. The value, as of the effective date of the Plan, of property to be distributed under the Plan on

account of such claim is not less than the allowed amount of such claims; or

- c. The Debtors have surrendered or abandoned the collateral securing the claim; or
- d. The treatment of the claim complies with 11 U.S.C. Sec. 1322(b)(5).

IT IS ORDERED THAT:

1. The Debtor's Plan, as modified, if any, by this Order, is confirmed.
2. The Debtors shall pay the sum of \$1050.00 per month for 60 months for a total of \$63,000.00 to Michael Gross, Trustee, payable in Tyler, Smith County, Texas, beginning the 15th day of April, 1992, until all of the allowed claims provided for under the Plan have been paid in accordance with the terms of the Plan, of this Order, or until further order of this Court.
3. The Trustee shall make disbursements pursuant to the provisions of the Plan, as modified, if any, by this Order, Section 1326 of the Bankruptcy Code, and shall pay only such claims which have been allowed by the Court. The Trustee shall make such disbursements monthly, unless otherwise provided by the Plan, but shall not be required to pay any dividend in an amount less than \$15.00 and dividends not distributed because of this provision shall accumulate and be paid when such accumulation aggregates \$15.00 or more.
4. The Debtors shall not incur additional debt during the term of this Plan except upon written approval of the Trustee. Failure to obtain such approval may cause the claim for such debt to be unallowable and non-dischargeable.
5. The order of payment, unless otherwise directed, shall be:

- a. The percentage fee fixed for the Trustee pursuant to 11 U.S.C. Sec. 1302(e);
- b. Any unpaid claim of the kind specified in Section 507(a) of Title 11 U.S.C.;
- c. Creditors whose claims are timely filed and allowed in such amount and order of preference as may be provided by the Plan or as may be required to provide adequate protection of the interest of an equity with an interest in property of the estate as ordered by the Court, or as deemed necessary within the discretion of the Trustee.

6. The following secured claims are known to the Court at this time and are allowed as follows:

Name of Creditor	Allowed Amount of Claim	Rate of Interest	Monthly Payment	Total Amt. To Be Paid
Associates Commercial	\$31,875.00	9%	\$679.77 on 6-15-92 for 58 mos.	\$39,426.66
Chrysler Credit Corporation	\$3425.00	9%	\$108.91 on 4-15-92 for 36 mos.	\$3920.76
First National Bank of Jasper	\$3500.00	9%	\$ 74.64 on 6-15-92 for 58 mos.	\$4329.12

7. The following secured claims are not dealt with in the Debtor's Plan, and therefore, the automatic stay provisions of 11 U.S.C. Sec. 362 are hereby terminated and annulled with respect to each of the following claims:

NONE

8. The Debtors, in lieu of the Trustee, shall reaffirm and make disbursements on the following portions of secured claims dealt with in the Plan under 11 U.S.C. Sec. 1322.

Name of Creditor	Total Amount Paid During Plan	Monthly Payment		
Community Bank	Balance of Note	\$371.00		
GMAC	Balance of Note	\$194.87		
Name of Creditor	Allowed Amount of Claim	Rate of Interest	Monthly Payment	Total Amt. To Be Paid
Trustee	\$6300.00	-0-	\$105.00	\$6300.00
Robert E. Barron Attorney	\$2500.00	-0-	\$835.00 on 4-15-92 for 2 mos. \$ 33.20 on 6-15-92 for 25 mos.	\$2500.00
IRS	\$2745.00	-0-	\$ 47.33 on 6-15-92 for 58 mos.	\$2745.00

9. The following Administrative, Attorney Fee and Priority Claims are known to the Court at this time and are allowed as follows:

Name of Creditor	Allowed Amount of Claim	Rate of Interest	Monthly Payment	Total Amt. To Be Paid
Trustee	\$6300.00	-0-	\$105.00	\$6300.00
Robert E. Barron Attorney	\$2500.00	-0-	\$835.00 on 4-15-92 for 2 mos. \$ 33.20 on 6-15-92 for 25 mos.	\$2500.00
IRS	\$2745.00	-0-	\$ 47.33 on 6-15-92 for 58 mos.	\$2745.00

10. Debtors shall return the following collateral to the secured or priority creditor described in full satisfaction of the debt.

NONE

Each secured creditor described herein shall retain the lien existing prior to the commencement of the case to secure payment of the allowed amount of its claim.

The foregoing provisions regarding secured claims are based upon claims that have been filed or otherwise disclosed to the Court as of this date. The Court retains jurisdiction to review this Order upon the request of any interested party if additional claims are filed and allowed subsequent to the entry of this Order, which would render inaccurate the Court's findings in paragraphs 3 and 4.

SIGNED this 20th day of January, 1993.

/s/ Donald R. Sharp
DONALD R. SHARP
United States Bankruptcy Judge

[Filed Sep. 24, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Nos. 1:93CV-0078
1:93CV-0079

ASSOCIATES COMMERCIAL CORPORATION

vs.

ELRAY RASH and WIFE JEAN RASH

JUDGMENT

For the reasons set forth in the Memorandum Opinion signed and filed on September 14, 1993, the Court renders judgment for the Appellees. The decisions of the bankruptcy court are therefore AFFIRMED.

Signed this 24th day of September, 1993.

/s/ [Illegible]
United States District Judge

[Filed Sep. 27, 1993]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

[Caption Omitted]

**NOTICE OF APPEAL TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

Associates Commercial Corporation, the Plaintiff, appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment of the District Court for the Eastern District of Texas entered in this case on September 16, 1993, captioned as the "Memorandum Opinion" and which affirmed the decision of the Bankruptcy Court Order appealed from.

The parties to the judgment appealed from and the names and addresses of their respective attorneys are as follows:

Robert E. Barron
PO Box 1347
Nederland TX 77627
(409) 727-0073
Attorney for Debtors

Michael Gross
PO Box 7190
Tyler TX 75711
Trustee

Dated [23] September, 1993

Respectfully submitted,

**HIRSCH, ROBINSON, SHEINESS
& GLOVER, P.C.**

By: /s/ **Tina Snelling**
Ben L. Aderholt
SBT No. 00909000
Tina Snelling
SBT No. 18794350
917 Franklin at Main
Houston TX 77002
Telephone: (713) 236-7958
Facsimile: (713) 236-7824

Attorneys for Plaintiff
Associates Commercial
Corporation

[Certificate of Service Omitted]

[Filed Oct. 1, 1993]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

[Caption Omitted]

**NOTICE OF APPEAL TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

Associates Commercial Corporation, the Plaintiff, appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment of the District Court for the Eastern District of Texas signed on September 24, 1993 and entered in this case on September 27, 1993, in Volume 242, at Page 160 which affirmed the decision of the Bankruptcy Court Order appealed from.

The parties to the judgment appealed from and the names and addresses of their respective attorneys are as follows:

Robert E. Barron
PO Box 1347
Nederland TX 77627
(409) 727-0073
Attorney for Debtors

Michael Gross
PO Box 7190
Tyler TX 75711
Trustee

Dated 30th September, 1993.

Respectfully submitted,

**HIRSCH, ROBINSON, SHEINESS
& GLOVER, P.C.**

By: /s/ Tina Snelling
Ben L. Aderholt
SBT No. 00909000
Tina Snelling
SBT No. 18794350
917 Franklin at Main
Houston TX 77002
Telephone: (713) 236-7958
Facsimile: (713) 236-7824

Attorneys for Plaintiff
Associates Commercial
Corporation

[Certificate of Service Omitted]

[Filed Oct. 6, 1993]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

[Caption Omitted]

**AMENDED NOTICE OF APPEAL TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

Associates Commercial Corporation, the Plaintiff, appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment of the District Court for the Eastern District of Texas signed on September 24, 1993 and entered in this case on September 27, 1993, in Volume 242, at Page 160 which affirmed the decision of the Bankruptcy Court Order appealed from.

The parties to the judgment appealed from and the names and addresses of their respective attorneys are as follows:

John J. Durkay
Mahaffy Weber
P.O. Box 16
Beaumont, Texas 77704
Attorneys for Debtors

Robert E. Barron
PO Box 1347
Nederland TX 77627
(409) 727-0073
Attorney for Mr. and Mrs. Rash
Requesting Notices In This Appeal

Michael Gross
PO Box 7190
Tyler TX 75711
Trustee

Dated 5th October, 1993.

Respectfully submitted,

**HIRSCH, ROBINSON, SHEINESS
& GLOVER, P.C.**

By: /s/ Tina Snelling
Ben L. Aderholt
SBT No. 00909000
Tina Snelling
SBT No. 18794350
917 Franklin at Main
Houston TX 77002
Telephone: (713) 236-7958
Facsimile: (713) 236-7824

Attorneys for Plaintiff
Associates Commercial
Corporation

[Certificate of Service Omitted]

[Filed Jul. 30, 1996]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 93-5396

D.C. Docket No. 1:93-CV-78

**IN THE MATTER OF: ELRAY RASH; JEAN E. RASH,
*Debtors***

**ASSOCIATES COMMERCIAL CORPORATION
*Appellant***

v.

**ELRAY RASH; JEAN E RASH,
*Appellees***

**Appeals from the United States District Court
for the Eastern District of Texas, Beaumont**

**Before POLITZ, Chief Judge, REYNALDO G. GARZA, KING,
JOLLY, DAVIS, SMITH, DUHÉ, WIENER, BARKSDALE, EMILIO
M. GARZA, DEMOSS, BENAVIDES, STEWART, PARKER and
DENNIS, Circuit Judges.***

* Judges GARWOOD, HIGGINBOTHAM and JONES are recused and did not participate in this decision.

JERRY E. SMITH, Circuit Judge, with whom REYNALDO G. GARZA, DUHE, BARKSDALE, EMILIO M. GARZA and DEMOSS, Circuit Judges, join, dissent:

JUDGMENT

This cause came on to be heard on the record on appeal and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this court that the judgment of the district court in affirming the judgment of the bankruptcy court in this cause is affirmed.

IT IS FURTHER ORDERED that appellant pay to appellees the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: Aug. 29, 1996

A true copy

Test

Clerk
U.S. Court of Appeals
Fifth Circuit

By /s/ Latonya Walker
Deputy Clerk
New Orleans, Louisiana